60% from the volume that was obtained during the comparable period in October, 1950.

5. In addition, since the publication of the order of the Federal Communications Commission there has been an alarming falling off of the number of customers entering our store inquiring about television receivers. Many of the prospective customers entering our store have stated that they intend to postpone their purchase of a television receiver until the confusion and uncertainty surrounding color television has been clarified.

6. In my opinion, sales of present television receivers will continue to fall off especially with the continued appearance in the New York newspapers of advertisements and public announcements concerning color television.

7. The sudden and severe falling off of sales of television receivers which my company has experienced, has placed it in an alarming position. The present television receivers which are in stock are not moving and we cannot get and do not expect to be able to get television receivers or equipment which will receive color programs should they be broadcast for the immediate future.

8. At the present time Baim and Blank, Inc. have discharged four employess and should this condition continue, it will be obliged to discharge at least 12 additional employees.

William Blank.

Sworn to before me this 13th day of November, 1950
Adolph Fox Notary Public State of New York
No. 03-6368500 Commission expires March 30, 1952
(Notarial Seal)

[fol. 1430] In the United States District Court

[Title omitted]

Affidavit of Frank Perloff

State of New York
County of New York, ss:

Frank Perloff, being duly sworn, deposes and says:

1. I am President of Friendly Frost Stores (hereinafter called "Frost Stores") whose principal office is located at 82-11 Rockaway Boulevard, Ozone Park, New York. I am

familiar with the sale of television receivers at the retail level.

2. Frost Stores is engaged and for the past five years has been engaged in the sale to the public of television receivers and other major appliances.

[fol. 1431] 3. Frost Stores has 6 stores located throughout the New York Metropolitan Area, presently employs approximately 135 people and its gross sales are in excess of six million dollars per year.

4. Frost Stores sells all the leading makes of television receivers, including RCA, Admiral, DuMont, Philco, Emerson and General Electric.

5. With the public announcement of the order of the Federal Communications Commission adopting the CBS color system, Frost Stores sales of television receivers experienced a sharp decline. During the period October 12, 1950 to October 25, 1950, such sales were 55% below the sales for the comparable period prior to the publication of the above mentioned order. During the period October 25, 1950 to November 1, 1950, there was an increase in the number of sales of television receivers due to the impending Excise Tax. However, since November 1, 1950 to date, the sales of television receivers by Frost Stores have sharply decreased so that at the present time they are 80% below the sales effected for the comparable period prior to the announcement of the above mentioned order.

6. It is evident from statements and inquiries received from people coming into our stores that the falling off of television receiver sales has been due to the publication of the order of the Federal Communications Commission with its promise of a color television service and to the public announcements of the Columbia Broadcasting System, Inc. of its proposed color television programs. Our salesmen have reported that a number of prospective purchasers have decided not to buy a television receiver at the present time and stated that they intend to postpone their purchase until they can be assured that they will have a television receiver that will be capable of receiving all available broadcasts.

Frank Perloff/Pres.

Sworn to before me this 13th day of November, 1950.
Adolph Fox Notary Public, State of New York
No. 03-6368500 Commission Expires March 30, 1952. [Notarial Seal.]

[fols. 1431a-1432] [File endorsement omitted]

[fol. 1433] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. O. REINECKE—Filed November 13, 1950

STATE OF ILLINOIS,
County of Cook, ss:

J. O. REINECKE, being first duly sworn, deposes and says:

1. I am the operating head and owner of J. O. Reinecke & Associates, Industrial Designers, 720 North Michigan Avenue, Chicago.

2. This affidavit is made with the full knowledge that it will be used in support of the plaintiffs' motion for a temporary restraining order and a temporary injunction, restraining, enjoining and suspending the promulgation, operation and execution of the Order of the Federal Communications Commission adopted October 10, 1950, effective November 20, 1950, providing standards for the commercial broadcasting of color television, and the supporting motions seeking the same relief of Local 1031, International Brotherhood of Electrical Workers, Intervenor, and other intervenors.

3. I have been an industrial designer since 1935. Personally or under my supervision, my organization has designed not less than 5,000 separate products, among them, a wide variety of household products, including cooking utensils, toasters, ranges, refrigerators, radio and television re-
[fol. 1434] ceivers, and other household appliances.

4. I have designed radio receivers for Motorola, Inc., and other companies since 1937, and have designed television receivers for Motorola, Inc. since 1948.

5. In July, 1950, Motorola, Inc. received the Fashion Academy Annual Award for television design.

6. The principal task of an industrial designer in connection with household products, such as radio and television receivers, is to secure a pleasing product design which will be acceptable to large numbers of consumers, but of such character and quality that it can be produced by mass pro-

duction methods. Aesthetic emphasis, however, is the principal concern of the industrial designer.

7. As an industrial designer, I am required to keep constantly aware of what the public will accept or reject in the appearance and design of products offered for retail sale.

8. In connection with my work as a designer of radio and television sets, I have become thoroughly acquainted with current proposals: (a) to adapt and convert existing television receivers for receipt of 405 lines CBS signals in black and white, and for translation of these signals into a color image; and (b) to mass produce new television receivers capable of receiving either standard black and white broadcasts or CBS color broadcasts.

9. In this connection I have read the report of the Federal Communications Commission of September 1, 1950, which is annexed to the complaint of the plaintiffs as Exhibit "B." I have read descriptions of the proposed adapters and converters in the various trade journals of the radio and television industry, and I have seen published pictures of attempted adaptations and conversions, and of models of receivers calculated to house adapter and converter devices in original manufacture.

10. It is my considered judgment that for the reasons outlined below, it will be impossible for any manufacturer to produce adaptation and conversion systems for existing television receivers on a mass production basis.

11. It is also my judgment that it will be physically impossible to incorporate color adaptation and conversion into [fol. 1435] most TV receivers now in use.

12. Also, for the reasons outlined below, it will be difficult to design, for satisfactory mass use, an integral television receiver unit, capable of receiving the CBS proposed 405 line signal, in color, as well as the standard 525 line signal, which is now being commercially broadcast.

13. In the radio and television industry, manufacturers change receiver designs not less than once every year, and most manufacturers change such designs every six months.

14. The smallest of my TV receiver designs which is now in production by Motorola has a tube of 12½ inches. Most of my designs are being produced in connection with 14-inch and 16-inch receiver tubes. The last 7-inch tube design which I made for Motorola was in September, 1948. In May, 1949, I was last retained to design a 10-inch receiver.

These sizes are no longer in production. I can state categorically that a standardization of adaptation and conversion systems on existing television receivers is impossible, not only because of the frequent changes in the physical cabinet design which have been made from time to time by the various manufacturers, but also because of the wide variety of shapes, dimensions, tube positions, knob positions, accessory positions, and utility space positions of the various television receivers.

15. The most difficult task of the designer attempting to create a mass-produced adaptation and color conversion system, is the placement of the color wheel in relationship to the receiving tube. Since this wheel must according to all projections, be not less than twice the size of the tube, the designer is faced with the problem of relating the wheel or disc diameter to all of the external features of the receiver. Thus, on some receivers there are tuning knobs which would either be in the path of the color converter disc or which would be concealed by the disc or its housing. Many receivers have doors which could not be opened or closed across the space which must be allocated to the wheel. Other receivers have space for phonograph or radio mechanism or album storage, which necessarily would conflict with wheel coverage.

[fol. 1436] There has been no standardization of tube location in existing television receivers. Some are at the top of the cabinet. Some are centered on the cabinet. Some are recessed into the cabinet. Others project from the cabinet.

Some cabinets have square corners. Others have rounded corners. In combination sets, the TV viewing tube may be on the left side of the cabinet, or it may be on the right side of the cabinet. The tube may be placed relatively high or relatively low with reference to the top of the cabinet.

16. All of these practical considerations, which involve no aesthetic problems at all, substantiate my conclusion that mass production of a satisfactory conversion and adaptation system to enable existing black and white television receivers to receive the CBS color signal is an impossibility. Such types of receivers as may lend themselves to adaptation (and even according to the FCC, it is admitted that many do not), in my judgment, will require custom installations in plants with facilities therefor.

17. But there are other considerations which dishearten me in my efforts to visualize adaptation and conversion system for existing black and white receivers. No matter how carefully a conscientious designer might attempt to modify or subdue the lines of an external adaptation and conversion system, the size of the color wheel presents an almost insuperable design problem. While it is pointed out that the diameter of the color disc must be more than twice the width of the receiving tube, the total area of the color wheel is much greater than twice the tube area. Thus, for example, a ten-inch tube requires a disc of approximately 23 inches in minimum diameter. While the area of the tube is fifty-two square inches, the area of the color disc would be 415 square inches, or eight times the tube area.

18. It must be borne in mind that television cabinets are purchased by customers and are accepted into the home not only as a medium of entertainment and education, but also [fol. 1437] as furniture. The consumer demands and the TV industry supplies products styled as furniture.

19. The average receiver is kept in an apartment and space limitations are such that the larger percentage of TV users have household space which can accommodate only table models or narrow console models. The appearance of a large exposed disc is not compatible with other home furnishings. It is difficult, if not impossible, to design a large external adaptation and conversion system which will satisfactorily blend harmoniously with the design and styling not only of the television receiver, but of the household furniture. From a design point of view, there is an element of danger in the presence of a high-speed rotating disc which must be considered. Safety precautions dictate the necessity of a shield or housing for the disc. This additionally adds mass and conflicting lines to the original receiver. From a mass production point of view, circular fabrications in wood are more expensive. This would seem to indicate a square shape for the color disc which, of necessity, would involve accommodation for a device having ten times the tube area for color conversion. External housing for a motor of sufficient power to rotate the disc further complicates the design problem by additions of mass and line conflict.

20. Despite its unfeasibility from the design point of view, I will admit that it is possible to custom-make and

accommodate in a home the conversion and adaptation system proposed by CBS on receivers of 7 to 12½ inches in size. However, because of the disc area problems involved, I do not see how it is possible, even on a custom basis, to provide an adaptation and conversion system for a receiver with a tube of 14 inches or larger. The FCC properly suggests that a 26-inch diameter is the largest maximum feasible size for a color wheel. It further suggests that the owners of sets with tubes larger than 12½ inches, can reduce the picture size in order to have full CBS color reception of a 12½ inch picture. I know of no existing techniques whereby the control knobs of present television receivers can be readily used by the home owner to reduce picture sizes. In practice, unless the set owner can install [fol. 1438] a wheel of more than twice the size of the viewing tube, he could not enjoy a CBS TV broadcast, or the new signal in color. This would rule out conversion for all sets now in use which have 14-inch or larger tubes. Such larger units by far constitute the majority of receivers in current use.

21. The comments above relate to attempted adaptation and conversion of existing television receivers to receipt of the proposed CBS color signal. Designing new receivers with so-called "built-in" adaptability and convertibility presents almost equally insuperable problems to an industrial designer. While it would not be impossible to design a television cabinet, incorporating a color wheel, in my judgment, it is impossible to design one which is economical, aesthetically sound and in keeping with good design principles. It is my judgment that the mechanical method of securing color in a television broadcast proposed by CBS and approved by FCC is archaic even before it is introduced.

22. The physical characteristics of the rotating color wheel system of color television viewing imposes limitations in cabinet design which in practice cannot be overcome.

23. The problems of incorporating into a cabinet the color wheel and motor housing necessitates large and cumbersome cabinet accommodations.

24. Viewing tube sizes have increased by popular demand since the introduction of commercial TV broadcasting. There is good reason for such increase in tube sizes.

Larger pictures make for more satisfactory visibility under average seating arrangements. Even if the public demand for larger and yet longer viewing tubes were to be denied by the restrictions of CBS color broadcasting, the design problem is still severe. The cubeage of a TV receiver which would incorporate the adapter and converter system demonstrated by CBS would be about 50% greater than current set sizes.

25. The trend of TV receiver design up to now has been increase of picture size without a proportionate increase in receiver cabinet size. Compactness is the keynote of current product design. Compactness reduces all costs of materials, shipping, handling, delivery, demonstration floor space and the purchaser's housing space which must be allocated to accommodate the receiver. In line with this trend viewing tube manufacturers have reduced tube lengths to permit shallower cabinets. They have also changed over [fols. 1439-1440] from round to rectangular tubes to reduce cabinet sizes.

26. Receivers built to accommodate CBS color broadcasts would be in reverse of the national trend of public desires in receiver equipment. Under the new proposal, larger pictures and greater set compactness would have to yield to smaller pictures on more massive equipment.

J. O. Reinecke.

Subscribed and sworn to before me this 13th day of November, A. D. 1950. Dorothy M. Barbato, Notary Public. [Seal.]

[fol. 1441] In the United States District Court

[Title omitted]

Affidavit of Richard L. Hirsch—Filed November 13, 1950

State of Illinois
County of Cook, ss:

Richard L. Hirsch, being first duly sworn, deposes and says:

1. I am the president of Hudson-Ross, Inc., an Illinois Corporation. I am also a principal stockholder in said corporation.

2. I have read the verified complaint of the plaintiffs in this action and the proposed intervenor's complaint of Local 1031, International Brotherhood of Electrical Workers, AFL.

3. While I have no knowledge of the facts alleged in such complaints which concern the internal operations or problems of the plaintiffs in this action or the labor organization which seeks to intervene, I am familiar with the facts stated in the complaint and in the intervenor's proposed complaint which concern the effects of the FCC Order of October 10, 1950, upon the television industry in general, and I hereby adopt such statements of fact as are therein recited.

4. This Affidavit is made with the full knowledge that it will be presented to the United States District Court for the Northern District of Illinois in support of the motion of the plaintiffs and of the intervenors for a temporary injunction restraining, enjoining and suspending the promulgation, operation and execution of the Order of the FCC adopted October 10, 1950, effective November 20, 1950, providing standards for the commercial broadcasting of color television. This Affidavit is also made in opposition to [fol. 1442] motions to dismiss or for summary judgment filed by the defendants and by the intervenor, Columbia Broadcasting System, Inc.

5. Hudson Ross, Inc., owns and operates three retail establishments in downtown Chicago at which it offers for sale to the general public phonograph records, radio and television receivers. Its stores are located at 101 West Jackson Blvd., 8 E. Randolph St., and 141 S. Wabash Ave. The Corporation and its predecessor partnership has been engaged in the business of retailing such merchandise since 1944. It is presently one of the largest of those business establishments in the City of Chicago which are devoted solely to the retailing of radio and television receivers. The sale of television receivers is, and since 1946 has been, its principal business activity.

6. The gross annual sales of television receivers by Hudson Ross, Inc. in Chicago and vicinity exceed the sum of two million dollars. The corporation has in its employ 150 persons. Of this number, 30 persons are employed as sales personnel, and 50 people are employed in its television and radio service and installation department. Unlike most other retailers of television receivers, Hudson

Ross, Inc. maintains its own service department as an integral phase of its retail business.

7. In the Chicago area, Hudson Ross, Inc. has been a pioneer in the sale of television receivers. It was among the first dealers in the Chicago area who were franchised to retail television receivers when public television broadcasts commenced here in 1946.

8. The corporation, through its retail establishments, sells television receivers manufactured by all of the major producers of such equipment in the field, among them RCA-Victor, Philco, Zenith, General Electric, Westinghouse, Admiral, Sylvania, Motorola, Emerson, Hoffman and Hallicrafters.

9. Either as an employee or owner, this affiant has been connected with establishments engaged in the retail sale of radio receivers since 1926.

10. In 1944 this affiant became a partner in Hudson Ross, and acquired his principal ownership interest therein.

11. Hudson Ross, Inc. has sold in excess of 20,000 television receivers in the Chicago area since 1946. As president of the corporation, this affiant is acquainted with the needs, desires, and expectations of the buying public regarding television receivers, and know intimately the serv-
[fol. 1443] icing and marketing problems connected therewith.

12. Since any and all proceedings and actions of the FCC which bear upon changes in broadcasting standards of radio and television programs affect directly the business of Hudson Ross, Inc., this affiant has examined and studied diligently all such proceedings and actions of this agency. I have read the report of the FCC issued on September 1, 1950, which is attached to the complaint of the plaintiffs herein as Exhibit B, and the FCC Order of October 10, 1950, effective November 20, 1950, concerning the standards of the commercial broadcast of color television. It is my considered judgment that the action of the FCC concerning color television broadcasting standards embodies fundamental error, runs contrary to public interest and convenience, is not based upon public necessity, and seriously jeopardizes the future of the television industry in all its branches, including broadcasting and the manufacture and sale of television receivers.

13. There are not less than six erroneous assumptions

contained in the FCC findings which I shall discuss in order. These errors are:

(a) The assumption that the CBS color system is "compatible" with existing black-and-white receivers,

(b) The assumption that the viewing public will rest content with a smaller television picture, from 7 to 12½ inches, so long as the picture is in color,

(c) The assumption that the owners of the more than nine million television receivers now in use, or any substantial portion of such owners, will freely spend from $95.00 to $170.00 for the adaptation and conversion of existing black-and-white receivers for the reception of the CBS color signal or even a lesser amount to adapt such receivers to receive such color signal in black and white.

(d) The assumption that the viewing public will readily accept and be satisfied with a television picture which is coarser than the black-and-white pictures which are presently available on their receivers.

(e) The assumption that it is possible to design, mass-produce and sell to the viewing public a satisfactory con- [fol. 1444] verter which will make possible the use of existing receivers to receive color signals under the proposed new standards, and

(f) The assumption that the FCC Order will make possible an orderly transition from present methods of television broadcasting and reception to newer and better methods.

Compatibility

14. Hudson Ross, Inc. strives to maintain retail establishments which deal fairly and honestly with customers. There are many other television retailers throughout the nation which are similarly minded.

We have sold in excess of 20,000 television sets since 1946. In connection with such sales we have often been asked by purchasers questions as to the possible obsolescence of such sets by the introduction of color broadcasting. We sought, always, to make frank answers to such inquiries by advising the prospective purchasers that the federal government (meaning the FCC) had already laid down rules which would protect them in the event that color broadcasting should become feasible in the future. We pointed out that the FCC had stated that broadcasting standards,

whether for black and white or color, would "assure to the public in basic outline, a single, uniform system of broadcasting which would enable every transmitting station to serve every receiver within its range". We advised them that the U. S. government (again meaning the FCC) had finally sanctioned commercial television broadcasting on the basis of its many statements that such broadcasting would not be allowed until a single, uniform system for broadcasting had been firmly established. We advised that the FCC had assured the public that it would "not be inflicted with a hodge podge of different television broadcasting and receiving systems". (FCC Report of May 28, 1940, in the matter of Order No. 65, etc., FCC Docket No. 5806). We also directed the purchasers' attention to the high stability of radio broadcasting standards, reminding them that radio receivers purchased in 1922 would still receive all regular broadcasts, despite the tremendous improvements in broadcasting, and receiving equipment. [fol. 1445] In good faith, and based upon statements by the FCC and the Condon Committee, we further answered inquiries regarding color TV by stating to prospective purchasers that the government would sanction color broadcasting only if such broadcasts could be received on present black-and-white receivers with black-and-white signals of even quality with present broadcasting standards, either without modification in such receivers, or with "relatively minor modifications". We know that other retailers in good faith made the same responses to questions of prospective purchasers. We were also able to point out to these prospective purchasers that technicolor pictures were being broadcast and were being received as clear black-and-white pictures.

What the FCC now proposes is utterly at variance with its previously announced standards. By the abrupt reversal of its oft-proclaimed policies, the FCC invites and solicits destruction of public confidence in that portion of the business community which manufactures and retails TV receivers.

CBS color signals could be received as black-and-white pictures on existing receivers only by the expensive rewiring of the receiver circuits, or by attaching an external adapter. When the adaptation is achieved, internally or externally, there would be a degraded 405-line black-and-

white picture in contrast to the 525-line picture which appears from present standard TV black-and-white broadcasts. The FCC suggestion that even on an adaptation from standard black-and-white to CBS black-and-white there is "compatability" between the CBS method and existing black-and-white receivers is without basis. The proposed addition of an even more expensive motor-driven, external converter to translate the CBS signal into a full color picture shows up the emptiness of FCC claims of "compatibility".

The FCC states in its Report of September 1, 1950, which I have read and which appears as Exhibit B of the original complaint in this case, "Since the rotating disc must be placed in front of the cathode-ray tube, some existing receivers with doors or recessed tubes would, in practice, be difficult to convert". Thus, the FCC admits that owners of the most expensive and most desirable TV receivers cannot adapt or convert their instruments for CBS color.

[fol. 1446] As a retailer I know, and I advise the Court, that the higher priced TV receiver models which have been sold to the public in recent years have doors and have recessed tubes as a part of their design. Additionally throughout the country, thousands of combination sets embodying AM and FM radio, phonograph and TV have been manufactured and sold and are still being manufactured and sold. All of these, of necessity, have doors and recessed tubes.

It must be borne in mind that the purchase of a television receiver is a major family investment. Over and above the price of the actual electrical and electronic devices the purchaser is acquiring an article of household furniture. He has paid extra money for improved or advanced models because of the character of the wood, the finish, and the design. The FCC, by its Order, would destroy the substantial investments which were made by these members of the public in the confident expectation that the government agency which regulates the television broadcasting industry, would live up to its promises and its duty to protect their interests. In no aspect can it be reasonably asserted that there is "compatibility" between the CBS proposed system and the existing millions of receivers which are now in the homes of the nation.

Restricted Picture Size

15. By its approval of color television broadcasting standards which would render a maximum picture of 12½ inches, regardless of the tube size, the FCC has demonstrated complete ignorance of all movements in the television market since 1946. Its experts would have done better to have spent an hour on the floor of any retail television establishment in the country than to have indulged in months of guessing and conjecturing as to what the public wants in a TV set. The FCC speaks glibly in its Report of the retail price of adapting and converting an existing 7-inch tube receiver to CBS color. It also speaks of the cost of adapting and converting 10 and 12½-inch sets. The prices quoted by the FCC for such adaptation and conversion of the 10- and 12½-inch sets range from $95.00 to $170.00. No price is quoted for the cost of adapting and converting a 16-inch set to receive a 12½-inch picture.

The FCC apparently does not know that 7-inch sets and 10-inch sets are no longer being manufactured or offered for sale in volume as new merchandise in responsible re- [fol. 1447] tail establishments. The public has long since passed the phase of being satisfied with the mere novelty of having a small action picture available at home. The whole emphasis of our industry has been upon larger and better quality pictures. I do not mean to say that 7-inch sets and 10-inch sets are being destroyed or sold for scrap, but I advise the court that in ordinary retail practice a 7-inch set when offered as a trade-in on a unit of 16 inches or larger, has a trade-in value of about $25.00. When Hudson-Ross receives such sets it may, on occasion, sell them to a retail customer for about $40.00 after reconditioning. This is a break-even price, and such a sale is usually made as an accommodation to a customer who has purchased a large set, but wants a second set for the child's room or similar auxiliary use.

10-inch sets receive a trade-in allowance of about $40.00, and after rehabilitation and under the circumstances described above, have been sold to purchasers of large sets as an auxiliary receiver for about $65.00 after rehabilitation.

The smallest receiver now being offered for sale in our retail outlets is a 12-inch set. This is priced at $129.00, but

is a very slow mover. As recently as June, 1950, in an effort to move excess inventory of 12-inch television receivers, Hudson-Ross and many other major television dealers priced them at $99.00 to overcome buyer resistance. While they sold at this price, there was by no means any stampede.

There are sound reasons for the public indifference to smaller TV receivers. Television viewing has tended to become a major group activity for families and for social gatherings. For group viewing, the smaller sets are not satisfactory. There is less eyestrain in connection with viewing images on the larger tubes than on the smaller tubes. There is greater convenience and more acceptable image quality in the larger sets. The overwhelming majority of receivers being made and sold today are 16 to 19 inches in size, and the buying public is still asking for even larger picture sizes. We have seen demonstrations of sets with tubes from 21 to 30 inches, and it is our firm belief that if the industry will be unmolested by [fol. 1448] arbitrary and unrealistic federal interference, 16-inch sets will represent the smallest unit acceptable to the purchaser of the future.

The following statement appearing in Paragraph 111 of the FCC report of September 1, 1950 has been noted by me with great interest.

> "At the present time, the apparatus in the CBS system is limited to projection receivers or to color pictures (unmagnified) of approximately 12½ inches on a direct view tube in a disc type receiver. The limitation on direct view tubes in disc receivers arises from the fact that the diameter of the disc must be at least twice that of the tube. It is not practical to have a disc much larger than 26 inches in diameter in the home. Receivers can be made with tubes larger than 12½ inches and the full surface of the tube can be utilized to view black and white pictures; the disc folds aside when black and white pictures are being received. For such larger tubes, the picture must be reduced to no more than 12½ inches when a color picture is being viewed."

The FCC should know that on existing black and white receivers larger than 12½ inches in size, there is no ex-

ternal mechanism or control to enable such picture to be reduced by the set user to a size smaller than the receiving tube. FCC thus presents to owners of the majority of the receiving sets of the nation the following choices: (a) installation of color discs more than 26 inches in diameter, a most unfeasible suggestion, (b) use of a smaller wheel which will render a portion of the picture in color and the remainder of it in black and white,—a terribly confusing prospect, or (c) no receipt of the CBS color signal at all, the only likely solution.

The FCC speaks glibly of magnified images, and proposes that the maximum 12½-inch picture under the CBS system could be magnified to 16 inches. Along with other retailers, Hudson-Ross has had its experience with magnifiers. They were a dismal failure. While they enlarged the image, they severely restricted the viewing angle, and in a group of several persons, only the person seated directly in front of the set could view a relatively undistorted picture. The industry itself gave up the magnifier experiment early in the game. The public could not be sold on them again, even at FCC command.

Adaptation and Conversion Costs Are Too High

16. As explained above, no ethical retailer would attempt to persuade the owner of a 7-inch set, currently worth $25.00 to $40.00 in the market, or the owner of a 10-inch set, currently worth $40.00 to $65.00, or of a 12½-inch set, currently selling for $99.00 to $129.00, to spend even the lesser amounts estimated by the FCC to adapt and convert such receivers solely for the purpose of receiving [fol. 1449] the CBS signal. A few gadgeteers might be willing to make this outlay, but by and large the public would resist making such expenditures. The FCC Order would saddle the manufacturers and retailers of TV receivers with an intolerable burden of assuming direct sales responsibility for urging upon the buying public the purchase of equipment and services which had best never been conceived.

Coarseness of New Signal

18. The FCC Order proposed a 405-line transmission in place of the standard 525-line monochrome which is now broadcast in accordance with previously established FCC standards. Picture coarseness, even at the 525-line

level, is one of the most serious problems in the sale and servicing of receivers today. Large sections of the public, when first becoming acquainted with television, have difficulty in accepting the lesser resolution of television pictures which they tend to compare with that which prevails in the theatrical projection of motion pictures. In completion of our service contracts we are frequently faced with calls from recent purchasers who complain of the relatively coarse picture which they are receiving on their present sets. Actually, in most instances, the receiver is rendering optimum performance, but nevertheless the new viewer must become accustomed to the standards. Most often the adjustment is made by teaching him to view the picture from a greater distance, from which the grain of the picture is less obtrusive and less objectionable.

Any further reduction in the standards of picture delineation will inevitably lead to immense public dissatisfaction. The Court can best visualize this problem by examining photographic reproductions in newspapers, particularly the cheaper neighborhood newspapers, which utilize coarse-grain engravings, with the fine-grain photographic reproductions in the better magazines. The difference between these two extremes of photographic reproduction is entirely in the lesser or greater number of lines which enter into the photo-engraving. It is inevitable that the public would resent a drop to CBS standards of picture quality. The "shotgun" wedding ordered by FCC of decreased picture size and decreased delineation is deplorable.

[fol. 1450] *Public Resistance to Non-Integral "Attachments"*

19. In my 24 years in the radio and television retailing industry I have endeavored to sell the products of various manufacturers designed to adapt existing radio sets to supplemental uses. I can report that almost without exception all of these efforts have failed, despite the good intentions of the manufacturers and the retailers, and notwithstanding their conscientious desire to enable the consuming public to enjoy additional pleasures by adapting existing facilities to other uses. Thus, short-wave adapters were not accepted by the public. Similarly, FM adapters were failures. The most successful type of adapter was

the phonograph attachment, but even in this field the public preference by far was against non-integral phonograph attachments or devices. Similar failure may be confidently predicted for the FCC-approved adapters and converters of existing TV receivers to reception of CBS color signal.

There is an even stronger and more cogent reason, however, for my firm conviction that the adapters and converters proposed will not be accepted. As I have noted above, in paragraph 14, in the past the average householder purchased a radio set, and now purchases a television set, as an item of significant household furniture. Its appearance and decor must blend with the other furnishings of the room in which the set is used. This is usually the living room—the place where the family gathers, and in which company is entertained. Although the mechanisms in sets with tubes of the same size are virtually standard from one set to another of the same manufacturer, there exists a wide price range. Variance in the retail prices of such receivers is based upon the quality of the cabinet which houses the electrical and electronic portion of the receiver. In shopping for a television receiver, the average person selects a set of a size, shape, color and design which blends with existing living-room furniture. All of these are matters which receive thorough and solemn consideration by every set purchaser. It is inconceivable to me as a retailer that these aesthetic preferences of the average set purchaser will be readily overcome by any broadcasting feature, however enchanting. It may be stated categorically that the American housewife will not permanently accept the placement of an ugly box in her living room, no [fol. 1451] matter how high the quality of the entertainment which might emanate from that box.

Market Disruptions Created by FCC

20. All of my foregoing observations might be treated merely as criticisms of the CBS proposal. An argument might be made that CBS should, nevertheless, be permitted to go ahead and meet the ultimate doom I so freely predict for its system.

The crisis in our industry is not so patly resolved. The fact is that the public has been victimized by a barrage

of confusing and misleading publicity concerning the possibilities of the early advent of satisfactory color broadcasting. CBS agents, principally its president, Frank Stanton, and one Arthur Godfrey, a CBS entertainer, have used the facilities of that network to advise people to stay out of the television market at the present time. In our daily operations we are meeting increasing consumer resistance and are losing sales. So greatly have color TV claims been exaggerated that present set owners who purchased from us have made service calls because their receivers don't show color pictures they believe are being currently broadcast. Financial institutions and television retailers throughout the country, including Hudson-Ross, hold millions of dollars worth of installment paper whose collection has been seriously jeopardized by the irresponsible Order of the FCC and the ill-considered statements of the agents of CBS.

Hudson-Ross has over two thousand television sets on hand, representing a total investment in excess of $600,000.00, and, like other dealers, is currently taking a "short" position with reference to its inventory because of the unsettled picture in the industry. Should CBS color broadcasts commence, even without a Chicago outlet, the set owners with whom we have dealt in good faith, and who have, in good faith dealt with us, may feel that they have been defrauded of an opportunity to view an available form of entertainment, and will blame the retailer and manufacturer of their receivers for their inability to receive programs in their homes.

[fol. 1452] Certain unethical manufacturers and retailers are currently selling standard black-and-white receivers upon oral, and even advertised, misrepresentations that these sets are readily adaptible and convertible at very modest cost for reception of color television broadcasts. Some manufacturers are installing so-called "jacks" which connect with the audio or sound circuits of the receiver and are labeling these receptacles "for color attachment."

These desperate sales tactics are but minor malpractices of the weak and short-sighted in our industry, to accommodate current sales to the major malpractices which are inherent in the CBS claims of "compatible" color TV

and the FCC's embodiment of such claims into enforcible broadcast standards.

Richard L. Hirsch.

Subscribed and sworn to before me this 13th day of November, 1950. Harold R. Rosenthal, Notary Public. (Seal.)

[fols.1453-1454] In the United States District Court

[Title omitted]

Affidavit of Harold V. Levin—Filed November 13, 1950

State of Illinois,
County of Cook, ss:

1. I am the Secretary-Treasurer of Hudson-Ross, Inc., an Illinois corporation, and a principal shareholder thereof.

2. I became a partner in the predecessor partnership of Hudson-Ross, Inc., in the year 1944.

3. I have read the affidavit of Richard L. Hirsch, President of Hudson-Ross, Inc., and I concur in and adopt all statements contained in said affidavit.

Harold V. Levin.

Subscribed and sworn to before me this 13th day of November, 1950. Harold R. Rosenthal, Notary Public. (Seal.)

[fol. 1455] In the United States District Court

[Title omitted]

Order Granting Leave to Intervene—October 30, 1950

The Columbia Broadcasting System, Inc., having moved for an order granting it leave to intervene in the above-entitled proceeding,

Now, upon reading and filing the notice of motion of Columbia Broadcasting System, Inc., dated the 27th day of October, 1950, and the motion to intervene of Columbia Broadcasting System, Inc., and upon all the papers and

proceedings heretofore had herein, and upon the consent of the attorneys for all the parties hereto, annexed to the moving papers and affixed to the foot of a copy of this order, and upon motion of Arvey, Hodes & Mantynband, Esqs., attorneys for Columbia Broadcasting System, Inc., it is

Ordered, that said motion for leave to intervene be and the same hereby is granted, and it is further

[fols. 1456-1457] Ordered, that Columbia Broadcasting System, Inc. be and the same hereby is made a party defendant in the above-entitled proceeding.

Dated: Oct. 30, 1950.

Philip L. Sullivan.

Consented to: Weymouth Kirkland, by Weymouth Kirkland; Kirkland, Fleming, Green, Martin & Ellis, by Weymouth Kirkland, Attorneys for Radio Corporation of America, National Broadcasting Company, Inc. and RCA-Victor Distributing Corporation, 33 North LaSalle Street, Chicago, Illinois.

Cahill, Gordon, Zachry & Reindel, by John W. Childs, of counsel to Radio Corporation of America, National Broadcasting Company, Inc. and RCA-Victor Distributing Corporation, 63 Wall Street, New York, N. Y.

Attorney General of the United States, by John F. Baecher, Washington, D. C.

United States Attorney for the Northern District of Illinois, by Anthony Scariano, Chicago, Illinois.

Federal Communications Commission, by Max Goldman, Washington, D. C.

[fol. 1458] In the United States District Court

[Title omitted]

Order Granting Leave to Intervene—November 14, 1950

It is ordered by the Court that leave be and it is hereby granted to Wells-Gardner & Co., to intervene herein as plaintiff.

[fol. 1459] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 14, 1950

It is ordered by the Court that leave be and is hereby granted to Emerson Radio & Phonograph Corp. to intervene herein as party plaintiff.

[fol. 1460] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 14, 1950

It is ordered by the Court that leave be and is hereby granted to Local 1031 International Brotherhood of Electrical Workers to intervene herein as plaintiff.

[fol. 1461] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 14, 1950

It is ordered by the Court that leave be and is hereby granted to Pilot Radio Corp. to intervene herein as party plaintiff.

[fol. 1462] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 14, 1950

It is ordered by the Court that leave be and is hereby granted to Sightmaster Corp., to intervene herein as plaintiff.

[fol. 1463] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 14, 1950

It is ordered by the Court that leave be and is hereby granted to The Radio Craftsman, Inc., to intervene herein as plaintiff.

[fols. 1464-1465] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 14, 1950

It is ordered by the Court that leave be and is hereby granted to Television Installation Service Association to intervene herein as plaintiff.

[fol. 1466] IN THE DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

TEMPORARY RESTRAINING ORDER—Filed November 16, 1950

Plaintiffs' motion for an interlocutory injunction and for a temporary restraining order from and after November 20, 1950 in the event the motion for an interlocutory injunction is not determined by that date, which motion has been adopted and joined in by interveners Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, Wells-Gardner & Co., Sightmaster Corporation, The Radio Craftsmen Incorporated, Television Installation Service Association, and Local 1031, International Brotherhood of Electrical Workers, AFL, and defendants' and intervener's (Columbia Broadcasting System, Inc.) motions to dismiss the Complaint, or in the alternative for summary judgment, having come on for hearing before the Court, and the Court not having had sufficient time to consider fully the issues raised and the verified complaints and affidavits filed by the parties, and having determined that irreparable damage will result if the promulgation, operation

and execution of the Order of the Federal Communications Commission adopted October 10, 1950, is not restrained and suspended pending determination of the motion for an interlocutory injunction and the aforesaid motions to dismiss the Complaint, or in the alternative for summary judgment, and the Court having made its Findings of Fact and Conclusions of Law to such effect, it is hereby [fol. 1467] Ordered that the motion for a temporary restraining order, restraining and suspending until further order of this Court the promulgation, operation and execution of the Order of the Federal Communications Commission adopted October 10, 1950, effective November 20, 1950, be and it hereby is granted; and it is further

Ordered that the promulgation, operation and execution of the aforesaid Order of October 10, 1950, be and the same hereby is restrained and suspended pending the further order of this Court.

Enter:

November 16, 1950.

J. Earl Major, Judge of the United States Court of Appeals, Seventh Circuit.

Philip L. Sullivan, Judge of the United States District Court.

Walter J. La Buy, Judge of the United States District Court.

[fol. 1468] IN THE DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed November 16, 1950

This cause coming on to be heard on the 14th and 15th days of November, 1950, upon a motion of plaintiffs for an interlocutory injunction, and for a temporary restraining order from and after November 20, 1950 in the event the motion for an interlocutory injunction is not determined by that date, which motion has been adopted and joined in by interveners Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, Wells-Gardner & Co., Sight-

master Corporation, The Radio Craftsmen Incorporated, Television Installation Service Association, and Local 1031, International Brotherhood of Electrical Workers, AFL, and upon motions by defendants and the intervener, Columbia Broadcasting System, Inc. to dismiss the Complaint, or in the alternative for summary judgment, before the Honorable J. Earl Major, Chief Judge of the United States Court of Appeals, Seventh Circuit, and the Honorable Philip L. Sullivan and Walter J. La Buy, Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, and upon all pleadings, affidavits and documents filed by the parties and upon consideration thereof and of the arguments of counsel for the respective parties, the Court, being advised in the premises, hereby makes the following Findings of Fact and Conclusions of Law:

[fol. 1469] FINDINGS OF FACT

1. The Federal Communications Commission (hereinafter called the Commission) on October 10, 1950 adopted an Order amending the Commission's "Standards of Good Engineering Practice Concerning Television Broadcast Stations". The order adopted the color television system of the intervener, Columbia Broadcasting System, Inc., and precludes the transmission of the color television system proposed by plaintiff Radio Corporation of America and of all other proposed systems other than the one adopted.

2. The Order, to become effective on November 20, 1950, provides for the commercial broadcasting of color television on standards which are different from the existing standards for the commercial broadcasting of black and white television, which have been in effect since 1941.

3. There are now in the hands of the public approximately 9,000,000 black and white television receivers, none of which can receive any programs broadcast in accordance with the new standards promulgated by the Order.

4. To protect the service which they have been getting, the owners of these 9,000,000 black and white television receivers would have to spend millions of dollars in order to adapt their sets to receive programs broadcast on the new standards.

5. After such adaptation, programs broadcast under the new standards would be received only as a black and white picture having less than one-half the picture detail of the existing black and white service.

6. For the public to both adapt and convert the existing 9,000,000 television receivers so that they would receive in color the programs broadcast in accordance with the new standards would cost many more millions of dollars.

7. Plaintiffs, on October 17, 1950, brought this action to enjoin, set aside, annul and suspend the Commission's Order of October 10, 1950.

[fol. 1470] 8. Plaintiffs have moved for an interlocutory injunction to restrain and suspend the promulgation, operation and execution of the Order, and for a temporary restraining order from and after November 20, 1950, in the event the motion for an interlocutory injunction is not determined by that date.

9. The pending action in which this motion is made has been brought pursuant to the provisions of Section 402(a) of the Communications Act of 1934, as amended (47 U.S.C. Sec. 402(a)) and of Title 28, United States Code (28 U.S.C. Sec. 1336, 1398, 2284, 2321-25), and of Section 10 of the Administrative Procedure Act (60 Stat. 243; 5 U.S.C. Sec. 1009), providing for the judicial review of orders of the Commission of the kind here involved, and for the issuance of temporary relief against injury caused thereby.

10. Plaintiffs' motion for an interlocutory injunction and for a temporary restraining order has been adopted and joined in by all parties who have intervened seeking to vacate, set aside, suspend and annul the Commission's Order of October 10, 1950.

11. The Court, while having been advised in the premises, has not had sufficient time to consider fully the issues raised by the verified complaints and the affidavits filed by the parties prior to November 20, 1950, the effective date of the Commission's Order.

12. The plaintiffs and interveners, representing manufacturers, employees, a distributor, a television broadcaster, a proponent of a color television system, set owners and television servicemen will suffer irreparable damage if the Commission's Order is not restrained or suspended during the consideration and determination of the action for an interlocutory injunction, by virtue of the impairment of the

market acceptance of present television receivers and by virtue of the inability of present television receivers to receive any broadcast on the standards adopted by the [fol. 1471-1472] Order without substantial expenditures which may prove to be useless. The foregoing is shown by: the affidavits of C. B. Jolliffe, sworn to on November 8, 1950; Walter A. Buck, sworn to on November 8, 1950; John H. MacDonald, sworn to on November 8, 1950; Walter H. Norton, sworn to on November 9, 1950; Richard L. Hirsch, sworn to on November 13, 1950; Harold V. Levin, sworn to on November 13, 1950; and J. O. Reinecke, sworn to on November 13, 1950; the verified Complaints of Emerson Radio & Phonograph Corporation, Wells-Gardner & Co., The Radio Craftsmen Incorporated, Television Installation Service Association, and Local 1031, International Brotherhood of Electrical Workers, AFL; and all other affidavits submitted in this action.

13. The temporary suspension of the aforesaid Order of the Federal Communications Commission pending a determination of the aforesaid motion for an interlocutory injunction will be in the public interest.

Conclusions of Law

Plaintiffs' motion for a temporary restraining order restraining and suspending until further order of this Court, the promulgation, operation and execution of the Order of the Federal Communications Commission adopted October 10, 1950, effective November 20, 1950, should be granted.

Enter:

November 16, 1950.

J. Earl Major, Judge of the United States Court of Appeals, Seventh Circuit.

Philip L. Sullivan, Judge of the United States District Court.

Walter J. La Buy, Judge of the United States District Court.

[fol. 1473] IN UNITED STATES DISTRICT COURT

[Title Omitted]

AFFIDAVIT OF ISIDOR GOLDBERG—Filed November 20, 1950

STATE OF NEW YORK,
County of New York, ss:

Isidor Goldberg, being duly sworn, deposes and says:

I am the President of Pilot Radio Corporation, one of the intervening plaintiffs in the above entitled action.

Heretofore and on or about November 8, 1950 there was issued out of this Court two subpoenas duces tecum, one addressed to Columbia Broadcasting System, Inc. (the intervening defendant) and the other addressed to the Federal Communications Commission, asking that they each produce at the hearing before this Court on November 14, 1950, certain letters, documents, correspondence, etc., more fully set forth in the said subpoenas. The originals of these subpoenas together with proofs of service thereof will be filed concurrently with the filing of this affidavit.

[fol. 1474] I am advised that on the argument of the plaintiffs' motion for a stay and for a temporary injunction and in opposition to the defendants' motion to dismiss the complaint or for summary judgment, counsel for Pilot Radio Corporation, intervening plaintiff, called to the Court's attention certain correspondence that had been exchanged between Senator Edwin C. Johnson, Chairman of the Senate Interstate and Foreign Commerce Committee, and the FCC or members of the FCC, and certain additional correspondence that had been exchanged between Senator Johnson and the intervening defendant, Columbia Broadcasting System, or officers of this company. There was also called to the Court's attention certain public addresses made by Senator Johnson in connection with the Commission's activities and its consideration of color television, more particularly, two addresses made in the Senate on April 20, 1949, and on February 16, 1950.

I am also advised that upon the argument by counsel for the intervening plaintiff, Pilot Radio Corporation, the Court's attention was called to the following facts:

First, that subpoenas had been issued addressed to the FCC and CBS, as hereinbefore set forth.

Second, that following the issuance of these subpoenas, Senator Johnson on November 9, 1950, addressed telegrams to Chairman Coy and to CBS reading as follows:

[fol. 1475] "According to the press, Pilot Radio Corporation has had subpoenas served on the FCC and CBS asking them to produce all correspondence and other communications they have had with me on color TV. I hope that every shred of correspondence between me and the FCC and CBS will be made a matter of public record. I have nothing to hide and I have nothing to cover up. I am sure that any correspondence will only go to show that my sole interest has been to see that the public is not denied color television. In addition, I believe it would be well for Pilot Radio Corp. to make full disclosure of meetings, correspondence and understandings between them and other TV manufacturers in relation to color TV.

(S.) Edwin C. Johnson,
Chairman Senate Interstate and Foreign Commerce Committee."

Third, that when the substance of the foregoing telegram was made public and appeared in the press, Pilot Radio Corporation addressed the following telegram to Senator Johnson on November 10, 1950:

"Note your statement that your relationship with CBS and FCC is an open book. Would be in the public interest for you to state why you have stepped outside the legislative role in this controversy and cajoled, prodded and even demanded that the FCC approve a color system which not only fails to meet fundamental principles, standards and criteria previously laid down by FCC, but which is almost universally disapproved by electronic engineers throughout the country. Would be in the public interest for you to state if you deem it proper in your capacity as Chairman of the Senate Commerce Committee, which passes on FCC appointments and influences appropriations, to have stated fourteen months before CBS color was approved, i.e., as far back as August 1949, after witnessing a CBS color demonstration, that 'color is here now'. Was it proper for you to state that FCC reluctance to then approved CBS color was a 'road block'

and 'contrary to the laws of progress'? Was it proper at that time for you to accuse the FCC of 'reasoning . . . logical in a totalitarian . . . state'? Would also be in the public interest for you to state your qualifications which enable you to set your judgment against [fol. 1476] that of trained engineers. For your information we started our suit without any cooperation with the television industry and have acted entirely on our own initiative against an unwise FCC decision. Our only interest is to insure that the public have the benefit of the best color system obtainable in the forseeable future, regardless of whose system it may be. We object to having foisted upon the present nine million television set owners needless and wasteful expenditures. It is for that reason alone that we are independently carrying on our fight against the unwise order of the FCC. Attorneys for CBS have just notified our attorneys that they will not disclose their correspondence with you until the Court hearing on the 14th. Request that you make same public at once.

(S.) Isidor Goldberg,
President, Pilot Radio Corporation."

Fourth, that thereafter, on the eve of the argument before this Court, that is, at 4:20 P.M., November 13, 1950, the following telegram was received by me from Senator Johnson:

"I am gratified to know of your purported concern for the public interest. In due course it is likely that those believed to be conspirators will be called before this Committee and given an opportunity to prove the other allegations contained in your telegram. No one who has a genuine concern that only the public interests be served will have any difficulty working with the Senate Committee on Interstate & Foreign Commerce. All Actions by this Committee in the past and in the future have been and will be governed by that standard alone.

(S.) Ed. C. Johnson,
Chairman, Senate Committee on Interstate & Foreign Commerce."

All of the foregoing was in good faith called to the attention of the Court because the same was deemed relevant and pertinent to the determination of the issues before the Court. In this connection, reference is made to the brief submitted on behalf of Pilot Radio Corporation, which [fol. 1477] among other things, points out that the "prodding, cajoling and demands" of Senator Johnson upon the FCC could only have had the effect of influencing that body in making a decision favorable to the CBS color system, and thereby explain an otherwise inexplicable decision by the Commission. Counsel for the FCC in its motion to quash the subpoena addressed to the FCC states that Pilot could not have adduced any evidence showing that the Commission's decision is the result of improper pressure on the part of Senator Johnson or that the correspondence between Senator Johnson and the Commission relating to color television is in any way improper or prejudicial. Such correspondence speaks for itself. Accordingly, the defendant should have no objection to the submission of the same to the Court for the Court's consideration and evaluation thereof in the light of all of the circumstances.

Pursuant to the subpoenas duces tecum referred to above, the defendants, FCC and CBS, produced in Court what purports to be copies of all letters, correspondence and telegrams between the Commission and Senator Johnson and the Commission, CBS and Senator Johnson. In addition to the correspondence, addresses and telegrams referred to above, there is attached hereto such additional communications from the aforesaid files submitted pursuant to the said subpoenas as counsel deemed pertinent in his inspection thereof.

The files in question of the Federal Communications Commission and of CBS are before the Court. Only the FCC has moved to keep out of the record the documents [fol. 1478] produced by it. It is respectfully requested that said motion of the defendant, FCC, be denied and that there be placed in evidence and made a part of the record in this case, or in the alternative that the Court take judicial notice of, each of the documents hereto attached and made part hereof and each of the telegrams set forth in the body of this affidavit.

(S.) Isidor Goldberg.

Sworn to before me this 17th day of November, 1950. Jerome S. Zurkow, Notary Public, State of New York, No. 24-4400350. Qualified in Kings County. Cert. filed with N. Y. Co. Clk. and Reg. Term expires March 30, 1951. (Seal.)

[fol. 1479] Copy

August 25, 1949.

Honorable Edwin C. Johnson, Chairman, Committee on Interstate and Foreign Commerce, U. S. Senate, Washington, D. C.

My Dear Mr. Chairman:

This is with reference to your letter of August 22, 1949, and the letter of Commissioner Jones of August 17, 1949, to Dr. Frank Stanton concerning the alleged attitude of radio manufacturers with respect to the building of color television converters for black and white receiving sets or for color receiving sets.

Until your letter was received, the Commission was not aware of Commissioner Jones' letter to Dr. Stanton nor of the statements referred to therein to the effect that radio manufacturers will not build color television converters. The Commission is equally concerned as to the implications of the alleged attitude of the radio manufacturers and has taken prompt steps to determine all the facts with respect to this matter.

Sincerely (S.) Paul A. Walker, Acting Chairman.

JNN:BPC/fmp.

Signed by above Initialed "J. H." Mailed by Aug. 25, 1949. Mail & Files. 8736-18.

[fol. 1480] United States Senate

Committee on Interstate and Foreign Commerce

Original File "CBG"

Received, Aug. 9, 1950. Federal Communications Commission.

August 4, 1950.

Dear Mr. Chairman:

We have noted with great interest copies of letters sent you during the last two days from two of the leaders in

the television industry with respect to the pending color television decision. We presume these letters grow out of the current rumors and intimations in the trade press that a final and conclusive decision is to be postponed indefinitely, using the war as an alibi. We put little credence in these incredible fears.

These letters from the Columbia Broadcasting System and the Radio Corporation prove conclusively once and for all that the selfish interest conspiring for delays are not the pioneers who have fought the hard battle in the laboratory and expended millions of dollars to make this amazing recreational and educational development available now to the American people.

On the other hand, busy-body scandal mongers are spreading these stories for a wicked purpose and obviously not in the public interest. They ignore the nine months of tedious, detailed, and searching hearings only recently completed—the most intensive ever held by an administrative agency. They forget the time and money spent by CTI, RCA and CBS in presenting their cases. They overlook the patience, the continuous attendance, and the intense study and concentration which each commissioner has given the mass of testimony which was presented in the tense atmosphere of good American rivalry and free enterprise competition. They overlook, too, the fact that this vital matter has been before the Commission for almost a full decade. Any further delay will place us far behind the rest of the world in this potentially phenomenal improvement of the television art.

Most certainly, the Commission now has before it all of the basic and scientific facts which can be presented. The eminent and unbiased committee of scientists, popularly known as the Condon Committee, has declared unequivocally that color television is ready now. Every member of the Senate is receiving a copy of the Condon report with a covering letter from me calling attention to its findings. Already, more than 1,100 copies have been sold by the Government Printing Office and Senators are requesting more and more copies for their constituents.

The employment of the current Korean crisis as an alibi for delay by the detractors of color television shows how desperate they are for any excuse for procrastina-

tion, deferment, or weasely worded proposed findings which would have the deadly effect of delay itself. When [fol. 1481] delay is the objective, of course any expedient will serve the purpose but it is wholly unrealistic for these selfish interests to seize upon the war needs as an excuse; it indicates an utter lack of appreciation of the important part played by electronics in modern war. The immediate commercial utilization of color television could be a vast aid to the defense effort in testing jet engine flame colors, observation of guided missiles, surveillance of various atomic processes, and in a number of other still secret processes and developments. Whether or not the Korean conflict, or even a major expansion of it, would seriously affect production in the electronics industry is beside the point. Korea is not part of the testimony in the record and even if it were honestly believed that a decision for immediate utilization of color could not be put into effect because of the war, the commission has no duty or responsibility or even right to use such an anticipated development as a prop for "no decision now," or for a proposed or tentative decision, or for anything other than a clearcut definitive decision based on the record before it. I am certain that you will agree that to do otherwise would subject the commissioners to the sharpest criticism.

However, I find it hard to believe such expediencies will be resorted to when I recall that the two most recent commissioners to appear before us for confirmation, Messrs. Webster and Sterling, are firmly on the record as favoring a quick and positive decision on color television; in fact, they took considerable credit personally for "pushing" their colleagues into doing something about color. The viewpoint of at least two other commissioners with respect to the advisability of a speedy and definitive color decision which would authorize immediate operation on existing channels is well known. I have such confidence in your common sense, responsibility to duty, appreciation for effective public relations, and deep concern for the general public interest that I have no qualms about your personal position. Therefore it is obvious that at least a majority believes that a decision *now* would in no way prevent future development of improvements in color which could and would be made as experience is gained from actual operation in the present TV band.

Consequently, I am grateful to the present commissioners for their constructive approach to the imperative need for speeding the commercial operation of color television. I know the devious character of the opponents. They have tried to bring pressure on Congress also. They will not hesitate to confuse the issue, spread false rumors and even attempt to induce commissioners to postpone, equivocate or hedge.

You know my deep concern over the color question but I am equally as concerned over the standing and stature of the Commission with the Congress and the public generally. Everyone realizes that the Commission is itself before the bar of public opinion in this matter.

[fol. 1482] In any event, I want it on the record now in advance that I have been in this campaign too long to surrender without a struggle. If there is any temporizing with a clear cut decision now, the fight must go on until the American people enjoy the beneficient gift which science already has brought out of the laboratory.

I feel so strongly about this entire matter that it seemed wise to write you as I do. With my warmest personal regards, I am

Very sincerely yours,

(S.) Ed. C. Johnson, Chairman.

ECJ:Cms

Hon. Wayne Coy, Chairman, Federal Communications Commission, Washington, D. C.

[fol. 1483] Copy

August 5, 1950.

Dear Ed:

I want to tell you how much I enjoyed our visit Thursday evening and thank you as well for the dinner.

I am enclosing an approximate copy of the picture I sent to Ed Craney. I had an extra one made at the time so I could experiment with it. Obviously, this is the one I didn't send, but I thought you might be interested in the gag.

As a result of our talk about the northwest, I can hardly wait to get back out again.

With all good wishes.

Cordially,

(S.) Frank Stanton.

ww

Mr. Edward Cooper, Committee on Interstate and Foreign Commerce, United States Senate, Washington, D. C.

[fol. 1484] Copy

United States Senate

Committee on Interstate and Foreign Commerce

Tuesday, 8 Aug. 50.

DEAR FRANK:

You are very thoughtful to send me the snaps. The Butte man in front of the restaurant is Al Shone, the man I mentioned when you were here. He is quite a character—garrulous, loud and extrovert. I have played cards (pangini) with him on many occasions. Marg (my wife) will be pleased with the pix—and incidentally they are excellent, you are obviously a first class photographer.

I noted the piece in the Sunday NY Times Magazine and was struck by the Baruch and Swope picture after our talk earlier this week.

I enjoyed the picture of Craney's billboard and am going to keep it.

How did you like the Senator's letter? It went into the Cong. Record today and we have released mimeographed copies—Earl got several and apparently will send some up to New York. I wonder what Wayne's reaction is. I hope he realizes that the letter was intended to strengthen his own position.

Again, many thanks for remembering me with the pix. If we get home this fall I'll give McShane the best regards of the Stantons.

Sincerely,

(S.) Edw.Cooper.

Original is handwritten.

Portion underscored is also underscored in Red Pencil.

[fol. 1485] Copy

United States Senate

Committee on Interstate and Foreign Commerce

June 22, 1950.

My Dear Mr. Commissioner:

I read with considerable interest your speech of June 19 before the American Taxicab Association, and particularly the third paragraph. There is something peculiar about that paragraph; it does not seem to fit into the remainder of the speech. Its content is remote from the subject matter being discussed.

Upon inquiry by the press earlier this week for comment on the speech I said: "Commissioner Webster could not have been referring to me since he said, '. . . those . . . who do not have any responsibility under the Communications Act.'" Of course, I need not remind you that under the Congressional Reorganization Act "each standing committee . . . shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee. . . ."

I did discuss with a group of television producers some weeks ago a possible timetable of Commission action on television decisions. The information I gave them at that time was procured from Chairman Coy, who was advised that these people were about to importune me to intercede in lifting the freeze and that I was most anxious to prove to them that not only was the Commission proceeding expeditiously and in the public interest and had my commendation for their work, but that it was proceeding in the only proper and logical manner. As far back as last April, Chairman Coy told the NAB convention in Chicago that he hoped that the freeze would be over by the end of the year, or earlier. Last month, he again in his Denver and Chicago speeches discussed the timetable of action by the Commission. Only last week, Commissioner George Sterling, testifying before our committee, gave us a similar timeable. These facts are called to your attention to refresh your recollection that all of the recent references to the Commission's timetable on television have come from

persons who *do* have a responsibility under the Communications Act.

As to the "capabilities of the individual commissioners and the staff to digest the record, etc.", I can readily appreciate your concern with respect to one of the commissioners and I assure you it is shared by many.

Very truly yours,

(S.) Ed. C. Johnson, Chairman.

Hon. Edward M. Webster, Commissioner, Federal Communications Commission, Washington, D. C.

[fol. 1486] April 20, 1949.

Address of Hon. Edwin C. Johnson (D., Colo.). In the Senate of the United States for Release upon Delivery.

A Report on Communications

By U. S. Senator Edwin C. Johnson (Colo.)

In this not-so-brave new world communications have played and ever increasing vital role. Indispensable in war, powerful instrument of peace, this art has served tyranny and democracy alike. From the crude tom-tom of the jungle to miraculous radar, communications have marked the progress of man. Realizing its power for good and for evil, Congress created the Federal Communications Commission to promote the development of communications and to protect the people against monopoly and the exploitation inherent in an industry requiring regulation.

By specific law it is the duty of the Interstate and Foreign Commerce Committee to supervise the Commission's actions and conduct. Therefore, it would be nothing short of dereliction of duty, if I did not report candidly the deplorable conditions which I have found prevail in this independent quasi-judicial and quasi-legislative agency of our Government. I have waited until I had an opportunity to probe and double check the patent situation before making this report on communications to Congress. Now with deep reluctance I shall undertake this unpleasant duty.

It is not an exaggeration to say that the Commission's functions are more precious to this Republic than gold and more vital to it than bread. Its power to destroy the

soul of America is far greater than 300 divisions of armed men under the direction of a ruthless foe. On the other hand its potential to bless America equals, if it does not surpass, our vast educational system of public schools. With firm determination the Congress must seriously contemplate these sobering thoughts.

As conditions in this agency of Government have grown from bad to worse, I feel compelled to employe the harsh method of a public denouncement of the evils which have grown up. To remain silent longer would reflect on my integrity and demonstrate my failure to be alert in the protection of the people's interest.

Individually the members of the Commission are persons of highest character and integrity. Taken one by one, each has superior qualities for the common task. I have voted for the confirmation of every Commissioner now serving because I believed each possessed the capacity to do an outstanding job. I would not change one of those votes today. Yet strangely enough, as a body exercising vital quasi-judicial and quasi-legislative functions they have failed utterly in protecting the people against monopolistic exploitation by not blocking the plans of the conniving clear channel lobby bent on radio domination; by not moving promptly to correct the Commission's earlier error in adopting a narrow television system which insured the control of television in a few patent holding corporations; and by not formulating a television plan which would guarantee the widest and freest competition.

I want to make it crystal clear that I believe in the American private enterprise system without reservation; I believe in the minimum of government controls consistent with maintaining and promoting the general welfare; I believe that the greatest good to the greatest number will result from free and vigorous competition, and that it is the duty of the Government to prevent monopoly and root it out wherever it appears. In radio, and particularly in television, the people of the United States and the world are dealing with the most powerful and effective propaganda medium ever known to man. I do not want that medium to fall into Government ownership; neither do I want it to fall into the hands of private monopoly. Free and unhampered competition is the answer. Therefore, my primary objective in everything I say today is to promote the widest and strongest competition in its development and use. Radio

and television are *not* a complicated, involved technical matter which laymen can complacently dismiss as an engineering problem. In fact, this very idea of complexity and confusion and technical abtruseness has been sown in the Congress and spread deliberately both within and outside the Commission to shut out prying minds. Every member of Congress can understand it once it is stripped of its technical jargon and deliberately distorted complexities. Simply put, a series of basic policy decisions and alert, industrious and honest administration are all that is required. Most emphatically, I say that we had better seek to understand it lest by complacency we allow an anti-democratic system to grow into a Frankenstein.

[fol. 1487] *Industry Takes Over*

Specifically, it is charged that the bewildered commissioners, bogged down in the technicalities and red tape of their own creation, are the captives of their own staff and that their own staff, in turn, is the captive of the high and the mighty in the very industry the Commission was created to regulate. The plow horse has usurped the plow handles and seized the whip and the Commission is now pulling the plow. Mr. President, This is a shocking indictment, but there is abundant evidence that it is true.

Cases Collect Dust

It is charged that awaiting decision by the Commission is a huge backlog of cases important to the people of this nation, many of which have been collecting dust down there two and three years with little or no prospect of action. Apparently, Mr. President, no one disputes that serious charge. In fact the staff boasts about it and cites it as evidence that an even larger staff is needed. In my opinion, under the present setup a larger staff would result only in more finagling and wrangling and fewer decisions. It is easier to drive a camel through the eye of a needle than it is to get a decision out of the Federal Communications Commission.

Premeditated Delays Wicked

It is charged that through the Commission's failure to make decisions great harm has been done not only to individuals but to whole communities. It is charged that

there are private interests who thrive on inaction and reap a profit out of the organized and premeditated delays which harass alert citizens planning improved service for the people. Certainly, Mr. President, in many instances failure to take any action is far more deadly and disasterous than an *adverse* action might be. When pending matters are delayed year after year the Commission's victims are tied up without recourse. They can make no plans for the future and they cannot go to the courts for relief.

Fear Rides the Ether

It is charged that the communications industry operates in an atmosphere of fear of the Commission. It is charged there is an even greater fear that the networks and the powerful manufacturing and patent holding interests, working hand in glove with the Commission, can and do exact their own economic sanctions. Mr. President. At least fear is an understatement in this case. There is genuine fear an ng the two thousand small and medium radio broadcasters in this country. In fact no one in the industry is free from it. Nothing behind the iron curtain compares with it except that in Russia physical punishment is invoked; over here the penalty is the threat of financial ruin. Under the law the Commission holds the power of life or death over radio broadcasters.

Less Speeches and More Work

It is charged that absenteeism within the Commission has reached an alarming stage and that when the Chairman is not making a speech in some near or distant city he is busy preparing one. Mr. President. One Commissioner has been in Mexico City since early last Fall in an international conference on the use of short wave. The Chairman and another Commissioner are taking their shots preparatory to a long international conference in Paris.

Doubtless the Chairman of this Commission is besieged with requests for public appearances in connection with matters concerning the industry. It is well that he exercises as much reserve as he does but it would be better if he made no speeches at all, particularly when they vary from week to week depending on specific influences at work. In Baltimore on March 23, he told the Advertising [fol. 1488] Club that television service as now set-up is

potentially capable of serving many millions of people; that in most areas technical transmission is satisfactory; that the problem of obsolescense of receiving sets is relatively minor since the present channels will be used for the indefinite future; that if he lived in Baltimore, he "would not wait until the FCC had decided what they are going to do about UHF"; and that he "would not wait until some bureaucratic agency decided whether there was sufficient propagation data available to write new standards". It is obvious he spoke thus to placate receiver manufacturers and to restore confidence in the minds of the cautious prospective buyers of sets.

But last week, speaking before the National Association of Broadcasters in Chicago, he emphasized that the public interest must come first; that the new Ultra High frequencies will be opened up in a few months; that "imaginative leadership rather than the Maginot Line type" is needed to bring television service to all of America; that costs of equipment must be reduced so that many can enter the field; and that there must be more competition. Praise be to the Lord that he spoke these truths.

However, the people should be informed by official Commission action rather than by public speeches which may tend to commit or embarrass the Commission and confuse Congress and the industry.

When the President recently cancelled his numerous speaking engagements in the interests of his job it was heartening to the country. This quasi-judicial Commission was hired to make tough decisions, not flattering speeches to the industry it regulates. The Commission has a mountain of unfinished business right here in Washington which demands its undivided attention for months. In this connection, it is reported that James E. Webb, the new undersecretary, has put the State Department to work. According to a recent newspaper article by Richard L. Stokes, one admiring subordinate said, "Boy, has he put this Department to work." Another added, "Since Mr. Webb came in, all of us even walk faster." A driving spirit such as this in the Federal Communications Commission is a must.

Since the Federal Radio Commission was created in 1927 and the Federal Communications Commission in 1934, there has grown up over the years a body of communication law, based on these Acts, and based on the rules and

regulations adopted by the Commission itself and based on its own decisions and on the court decisions affecting it. That is as it should be.

Devious Procedures Employed

Under such a system citizens doing business with the Commission should know their rights and duties. But do they? Ask any broadcaster in America today if he knows how the Commission is likely to act in a given set of circumstances. Ask any member of the communications bar here in Washington if he can advise a client how the Commission may rule under certain conditions. But ask them privately; don't ask them in an open hearing where their testimony will become known. If they criticize the Commission publicly, cases in which they are interested will suddenly begin to run into mysterious and exasperating delays; difficult engineering points requiring clarification will crop up where the technical matters had appeared to be settled; additional information dealing with stock ownership or financial standing suddenly will become necessary; some other station miles away will belatedly file an objection to a grant or change in license; or simplest and yet most devious of all, the case will just not be reached because of the "heavy workload piled up on the Commission".

These tantalizing procedures are common practices. It is known as "regulation by the lifted eyebrow". If some bright young man on the staff likes the color of your necktie, or the social or political philosophy you express, you have a fair chance for relatively prompt action. Better yet, if you are a former employee with friends on the staff, you might not only get your own cases out quickly, but actually [fol. 1489] succeed in delaying the cases of your opponents. This explains, in part, why a particular application may get through in two weeks while another application might wait four years. These time periods are not exaggerated; the record bears them out.

Staff Runs Commission

It is the staff, and principally the legal staff, that runs the Commission. It sets the schedules; it assigns cases to orders of priority; it pushes or slows the engineering and accounting bureaus as it deems expedient; it makes up the

weekly agenda of cases for the Commission to act upon. If now and then a commissioner, who may have been prodded by a congressman in behalf of a constituent who has a lagging case, inquires about it, he is glibly told that it has run into engineering problems, or it has been held up in accounting, or there are some legal matters "we are checking on".

A typical case was called to my attention some weeks ago. A man wrote me from Hutchison, Kansas, where he is interested in the local baseball team. He had worked out arrangements to have the games played at night broadcast by the small local station. The station operates daytime only but more than a year before, it had applied to the Commission for a change in frequency and power, and for fulltime operation. Another station promptly filed a protest, charging interference. The Hutchison station then sought another frequency, found it, filed a new application, and the station which had filed the protest, withdrew it. Apparently, the way was now clear for action. But when I had inquiry made, I was informed that the application stood fifty-second on what they call the second processing line. The "second processing line" is reserved for cases, "more involved technically". There is little hope of the Commission reaching final decision on this case for a long, long time and the Hutchison people will have been deprived of a fine public service. Yet no other station would have been harmed by approval. Why such simple cases must lay around for fourteen to eighteen months without a decision I cannot understand. But that's the way it is.

Another exasperating example involves allocation of frequencies for dispatching taxicabs. When the Commission announced nearly two years ago that frequencies would be assigned for use by taxicabs, applications poured in from all over this country. Then due to a faulty allocation plan they ran out of frequencies; furthermore many frequencies assigned to taxicabs resulted in sharp interference. So further assignments were frozen.

The proposal to allocate new frequencies was made in June of last year, the Commission indicating that a determination would be made by September. However, the hearing went through October. The Commission promised an immediate decision last December, and certainly not later than the first of the year. It is now April and still no

decision. Meanwhile, throughout the country taxicab companies who purchased expensive and costly equipment are not able to use it and all of the big talk a year ago about providing a new and worthwhile service for the people is monologue.

I recall a case where the original plans and financing for a radio station were premised on an investment of some $60,000 by three war veterans; when final Commission action was taken three years later, the costs had mounted to above $140,000. Meanwhile, legal fees, expenses of numerous trips to Washington, reluctance to move into other fields while their application apparently was still alive, wiped out their equity. This pathetic story can be duplicated scores of times.

Democratic Government Prostituted

It should be clear that in most instances, *no* action and *no* decision is far worse and far more deadly than an adverse decision. When a citizen receives a final determina-[fol. 1490] tion, he can go to the courts for justice, if he thinks he has a good case, or he can drop the matter, and employ his talents and capital elsewhere. But consider his situation when the decision is delayed for years. He and his associates, who have raised capital and made plans for building a station, or an improvement helplessly wait and watch while the economic situation changes for the worse. They cannot let go and they cannot hang on without suffering terrific financial loss.

Mr. President. Democratic government was created to aid citizens in achieving their legitimate social and economic aims; not to impede and repress them in their aspirations.

It is scandalous, shocking, and disgusting when such things happen. Why have they been permitted to continue? No other independent arm of Congress has been under such frequent and constant criticism as has the Federal Communications Commission and yet most of these criticisms have come to naught. The Commission's staff is too adroit and cunning to permit a real investigation to take place.

When a resolution for investigation goes through, there is an immediate assaying of the members of the investigating committee as to how they may be placated. If an application is pending for a license in Senator X's state the

applicant learns quickly that the Commission was about ready to act on his case, but now, unfortunately, the request for data and appearances before the investigating committee will slow up final action. The applicant thereupon gets in touch with his congressman and tells him what a great job the Commission is doing and suggests caution. Has Congressman Y or Z ever called regarding a station? If so, move their matters along, or hold them up, whichever seems better calculated to keep the congressmen from becoming too nosey.

Industry Lobbyists Fly to Rescue

And how the staff uses the industry, big and little, when the Commission faces an investigation! The only time I ever remember a powerful segment of the industry openly opposing the Commission during an investigation was in the Fly regime when he had proposed the adoption of the so-called network rules. But even then, while the radio industry's spokesmen inferred that the Commission was red, socialistic, and destructive of the American free enterprise system, the smaller broadcasters were more or less quietly supporting the Commission's proposal.

Ordinarily, however, the Commission can rely fully on the industry's willing legmen and well paid lobbyists to aid them. In the guise of being anti-Commission they counsel with and advise the investigating committee of leads that turn out to be either blind alleys or of little material consequence.

Industry Spreads Sunshine

The campaign to prostitute the FCC goes on and on. The technique is old but surprisingly effective. The inspiration for it is based primarily on the Commission's power to give or take away; to help or hinder; to grant favors or deny them; to make or break a licensee; to build or destroy. The Commission has the communications industry, large and small, in mortal fear of what it can do to them. That is why they move heaven and earth to get a friendly appointee on the Commission; why they wine and dine them; pretend to consult them not only about their aches and pains but about their most informal views on the most casual matters.

A Commission defender may point out that it has revoked only two or three licenses in its whole history. But

it is the club behind the door that brings home the bacon. The threat of license revocation; or the threat of a lengthy and expensive hearing; or the desire to have the Commission approve an increase in power or an additional circuit to a foreign country; or a request for purchase of another station; or the planning for or the promulgation of certain engineering standards; these are the compelling factors which inspire craftiness and intrigue.

[fol. 1491] Commission Violates Own Rules

That atmosphere exists because the Commission gives lip service to its own rules, regulations and previous decisions. It is no secret that in decision after decision the Commission either violates or bypasses its own rules. For instance, a wealthy New Yorker for years has continued to own two stations in violation of the duopoly rule.

Unfortunately, some commissioners have been confused by involved legal arguments made to them by their own staff. Such arguments appear compelling to the Commission when the staff contends it is trying to avert an adverse court decision. All too frequently a decision is written in such a way as to make it difficult if not impossible for an applicant or a licensee to get into court. A broadcaster may be granted a temporary renewal license while the Commission reviews his operations. In fact, he may be kept on a temporary basis for three or four years. All that time his economic neck is in the noose, never knowing when the trap will be sprung. After all, if the Commission revokes his license, his entire investment is gone. Usually, after a lengthy period of consideration, the Commission will renew the license but issue a lengthy opinion whose *obiter dicta* informs *that* licensee and *all other* licensees how on that point to conduct themselves.

That is judicial law making. It is an undemocratic and immoral procedure. It is a corruption of the legislative process without following the prescribed hearing formula. It is bureaucratic tyrannny. Even though they never appeared in a hearing and never had an opportunity to state their views licensees are bound by this strategy. The victim cannot set it aside; he had nothing to go to court about; he didn't lose his license and has no cause of action. Unfortunately, this practice is indulged in by too many of our regulatory agencies.

And who do you think writes these decisions—the Commission? Oh no! The legal opinion and drafts of decisions are written by the identical legal staff which prosecuted the case in behalf of the Commission in the first instance. A number of the legal staff represents the Commission in the original hearing, questions and cross-examines litigants; a month later, or six months later, or perhaps two years later, he prepares the Commission's final decision in the case.

In their last annual report the Commission said, "any final order is *subject* to judicial review in accordance with the appellate provisions of the Communications Act and the Administrative Procedure Act."

Of course, in theory, any order is *subject* to legal review; in practice, relatively few can get into court. Take, for example, the Commission's Port Huron, Michigan decision last year involving a station's duties in handling political broadcasts. After putting the licensee on a temporary grant and keeping him there for a year, the Commission majority decided that the licensee had done wrong and told him how and what he must do in the future. It did not revoke his license. The licensee was gratified that he could remain in business and, of course, he had no cause of action because he had not been deprived of any material thing. Obviously the decision was not subject to court review. The Commission's decision bound him, and by its dicta set a course of action for all other licensees to follow.

The Commission in its last annual report boasts that 21 cases went to the courts. This total of 21 cases is not impressive when it is understood that eight cases were on a single issue and were consolidated. Whether 14 litigants getting into court during more than a year is significant or not must be evaluated in relation both to the total number of cases handled by the Commission and, more important, whether or not the cases went up on substantive grounds or on procedural grounds. The small number that get to court on substantive points bears out the contentions of legal experts that their only hope for the future is broadened use of the Administrative Procedure Act. There is significance in the fact that the Commission's legal staff strongly resisted the efforts of the last two chairmen of the Senate Interstate and Foreign Commerce Committee

to tighten up procedural and appellate provisions of the Communications Act.

[fol. 1492] License Trafficking Permitted

Another grave charge is that the Commission has permitted the operation of a particularly nefarious practice which involves trafficking in Federal licenses and construction permits. It has become a common practice for construction permits to be advertised openly for sale for substantial sums. Engineering and legal fees may amount to as little as $2,000 and then be sold for $50,000 or more. Sometimes construction has begun; a building or a part of a building is up; or even a transmitter built. Sometimes the station may even be running its tests preliminary to actual operation. The authority to build and operate a station in a particular community is what is offered for sale. In my opinion, it was not the intent of the Communications Act that permits should be peddled to a second party.

In Washington liquor licenses are transferred for substantial sums, but broadcast licenses ought not be sold over the bargain counter like beans in the corner grocery.

With the advent of television there is now opening up a new field for the exploitation of construction permits and station licenses. For example, a motion picture group has an option to purchase a small local 250 watt station for a substantial sum of money premised on that station securing a television channel allocation. No television allocation—no sale. Under such a policy, who do you think will finally own and control television in this country? Under the law the Commission is required to determine the moral fitness of a licensee.

Commission Responsible

In the final analysis, it is the Commission rather than the staff on whom the responsibility for all these acts of ommission and commission must fall. Every succeeding chairman and many of the members have been appointed with the avowed objective to clean out the Aegean stables. The top staff personnel, who for years have been writing the decisions and guiding the policy, cannot easily be set aside, so imperative in effecting a shakeup. Before he under-

stands the job the chairman resigns, selects the crown prince to succeed him, moves on to greener fields and the Commission is back where it started and doing business in the same slip-shod, extra legal, awkward, ponderous way under the guiding hand of the career men on the staff.

The staff itself, as a whole, perhaps should not be severely criticized. Most of them are civil servants, working their way up and largely content to do their day-by-day tasks to the best of their ability. It is human and entirely commendable that staff members are on the lookout to better themselves. The legal and engineering experts realize that their best opportunities on the outside lie either with the large corporations or with well established legal firms. But the Commission should realize the temptations inherent in such a situation and govern itself accordingly.

A few, three or four persons in key positions, control the whole operation, and Mr. President, they control it! The organization of the Commission and its laxity and reluctance to face realities insures such control. The Commission, as a Commission, is just not on the job enough. Weeks may go by without a quorum.

[fol. 1493] Absenteeism Rampant

During the last six months one commissioner has been compelled to attend the high frequency conference in Mexico City; another has had to spend considerable time in Europe on mobile and safety service matters; most of them will be involved in the Fourth Inter-American Radio Conference here in Washington late this month; and two of them leave next month for Paris where they will have to spend several months taking part in the Telegraph Conference beginning in May. The North American Regional Broadcasting Conference is tentatively scheduled for September in Quebec. It is just one international conference after another.

It is my opinion as heretofore stated that additional personnel would result in greater delays and that increased salaries justified as they are as a matter of equity, would not improve the service materially. In certain activities, the Commission already has too many rather than too few employees. Out of a total of 1,400 about 900 are in Washington and 500 in the field. Most of the latter are engaged

in what is known as field engineering and monitoring work. It would appear that this latter activity could be cut down considerably without any serious consequences. In the early days when radio transmitter equipment was not as well engineered as today, the Commission did have to police the airways and keep stations on assigned frequencies. Today's fine equipment doesn't need that kind of surveilance.

Big government is dangerous; our's has gotten alarmingly large and shockingly inefficient, as the Hoover Commission reports clearly show. Changes in organization to make better use with more direct control of the staff now employed rather than have more people falling over each other will cure some of the trouble in the Commission.

As a matter of fairness and justice, however, I favor increases in salaries and especially in the Federal Communications Commission where expertness and good judgment are so necessary. But I am not foolish enough to believe that higher salaries will mean different employees. When salaries go up, as I hope most earnestly they do, we will see the same old faces, the same reactionary attitude toward progress and the same outside controls operating.

In this intriguing and fascinating industry every staff member and every commissioner faces the greatest challenge imaginable to do a job. If the challenge of pioneering in the most attractive scientific venture of all time is not enough to bring out the best there is, an increase in salary will not do it.

Chaos Prevails

In summary, it would appear to me that an honest and sincere evaluation of all of these charges and a frank willingness to meet them squarely would result in a house cleaning and shuffling of staff personnel; a reorganization of procedures; and a firm resolve to keep a quorum of the commissioners around the table until the logjam had been broken and some semblance of order restored where chaos now prevails.

Monstrous Decision Imminent

It is charged that the Commission is almost ready to hand down a decision in the clear channel super power case favorable to the clear channel lobby. Mr. President, I most earnestly hope and pray that rumor is wrong. Such

a decision would do the gravest violence to some 2,000 small and medium broadcasters throughout this country; would intrench more firmly the power and dominance of perhaps ten to fifteen major broadcast stations; and eventually would result in three or four New York and Chicago corporations controlling the program material pouring in a never-ending stream out of 70 million radios in the United States. Mr. President, such a monstrous decision would over-step the basic authority of the Commission. When such fundamental policy decisions are made Congress must make them.

[fol. 1494] People Face Exploitation

And finally, it is charged that the television allocation policy adopted several years ago under the Denny regime and being followed today by the Commission will result in the exploitation of the industry and monopoly control of programs. Mr. President. That policy allocation was designed to discourage the overwhelming majority of broadcasters from getting into television; will prevent the building up of a nation-wide service in television; will keep each new development and improvement in television from the public until those in control of patents have had a full opportunity to exploit the present market to the fullest and then, and then only, let the people in on the scientific developments which scientifically are ready now. Mr. President. Such a policy will maintain and perpetuate a tight monopoly control of what is undoubtedly the most potent and effective propaganda medium yet known to man.

Not only is the development of television vital to the people but domination of standard AM broadcasting may affect the very future of our kind of government. Involved in both is the specter of rigid monopolistic control of these media. The connivance of the staff of the Federal Communications Commission, wittingly or unwittingly, in these dangerous trends is obvious to all who have the facts. Actually the Commission does have the facts but appears unwilling to reverse its earlier decision.

Every radio station in the United States is affected by the clear channel super power controversy. Every member on this floor has received at one time or another communications from radio stations in his state or home town about it. Members fear they are being led into some techni-

cal wilderness and shy away when the subject is broached. There is nothing at all technical about it. It resolves itself into whether or not the Congress should permit its own creature, the FCC, a free hand to make a basic and fundamental policy decision of vast proportions which directly affects the general public interest and welfare. It is a policy and not an engineering decision.

Is the Congress the law-making body or is it a regulatory agency, pushed on by powerful, concentrated, economic interests and a skillful and highly-paid lobby, to be allowed to twist and distort the law against monopoly and hand down a decision which will do violence to every precept of free, competitive American enterprise?

Clear Channel Stations Have Wide Coverage

Ordinary radio service is known as AM, an abreviation for amplitude modulation. In the radio spectrum AM is located on your radio dial between 550 and 1600 kilocycles. There are 1060 kilocycles for radio use, which are divided into 106 frequencies or channels, upon which the signal travels. Each channel or path is 10 kilocycles wide to prevent interference from an adjoining channel. In the United States there are more than 2,000 radio stations occupying these 106 channels with each station assigned to a specific and fixed channel. Obviously, crowding 2,000 stations on 106 channels requires that each channel must accommodate an average of twenty stations. But the stations themselves vary, depending on their power and coverage. Small local stations, some daytime only, operating with 250 watts cover a very limited area and therefore are duplicated scores of times on the same channel throughout the country. The next class of stations having power of 1,000 up to 10,000 watts, cover a larger area and thus can be duplicated less frequently on the same channel.

Finally, there are 22 stations operating with power of 50,000 watts covering a wide area which during nighttime hours are the sole and only occupants of a channel. In other words, no other station, no matter how remotely located is permitted to use that channel at night. Thus the term "clear channel" arises; the channel is clear; no other station occupies it at night. This is true even though the clear channel station may be located in New York City and its signal heard only as far away as western Pennsylvania.

Nevertheless, the Commission will not assign that New York channel to a station in Pasadena, or Seattle, or Houston, or Birmingham, or Cheyenne, or Reno.

Even worse, the Commission has adopted rules which will not permit a small local station 1,000 or 2,000 miles away from the clear channel station to use that same frequency during early morning hours or during early evening hours.

[fol. 1495] Discrimination Against North Carolina

Senator Hoey's state of North Carolina is an important tobacco growing region. At Rocky Mount is a small local station which desires to render a service to the local tobacco farmers by broadcasting early morning weather and market information. That Rocky Mount station is permitted daytime use of a channel controlled by station WGY, a clear channel station in Schenectady, N.Y., owned by the General Electric Company. But the Rocky Mount station cannot begin operation before sunrise each morning and must close down at sunset each day. Many months ago the station applied for permission to start broadcasting one hour from 4 to 5 o'clock each morning so that the farmers would have information before going to the fields or into market. The Schenectady station did not operate at that hour and no one used that frequency and Rocky Mount could not interfere with the Schenectady station or any other station.

What did the Commission tell them? Why simply that it has a rule that would not permit the Rocky Mount station to render this public service to the tobacco farmers unless they had the permission of General Electric. Neither General Electric nor any other clear channel station would grant such permission since it would be frowned upon by the clear channel lobby.

FCC Policy Hits Small Stations

There are literally hundreds of such small, local stations, rendering, or attempting to render, a good local public service which cannot broadcast an evening high school basketball game, or a debate, or a local public service feature, or give early morning weather reports. Their broadcasts do not interfere with the clear channel station. It will not broadcast local crop information or a local high

school basketball game, or local musical programs or any other local matter. Many of these stations are operated by cities and towns and by colleges and educational institutions; many of them are non-profit stations rendering a fine public service and anxious to give even greater public service. The clear channel lobby playing dog in the manger, fortified by a convenient Commission rule, prevents the continuation of the Commission's earlier duplicating policy. The law plainly directs the Commission to serve the public interest and not the clear channel lobby interest. The clear channels belong to the people, not to General Electric or to anyone else. The clear channel stations are merely licensed to use them in the public interest.

In my opinion, the rule prohibiting daytime stations from broadcasting at night is wrong. But under the law one might respect it if the Commission treated all comers alike. It does not do so. The right pressure in the right place has influenced the Commission to violate this rule, just as it has conveniently by-passed other rules and precedents. For example, New York City's municipal daytime station, occupying a clear channel, has just been granted a six month temporary authorization to broadcast until 10 o'clock at night. This harms no one and serves a useful purpose and I rejoice that it was done but why discriminate and play favorites between Senator Hoey's Rocky Mount and New York City? Why deny non-profit educational stations in Iowa, Illinois and Oklahoma the same rights?

I repeat, these favored clear channel stations occupy a frequency reserved exclusively to themselves for nightime broadcasting. With the power they now have, they can cover an area approximately 750 miles in radius, some a little more and some a little less. These 22 stations are located in the large metropolitan cities of this country—New York, Schenectady, Pittsburgh, Philadelphia, Louisville, Nashville, Chicago, Fort Worth, Dallas, San Antonio, Los Angeles, Salt Lake, etc. Some of these cities have three clear channel stations. Theoretically they are supposed to render a service to rural listeners. But the overwhelming majority of them are located east of the Mississippi, in the heavily populated metropolitan areas. Do not overlook that their tremendous income comes from advertising based on the coverage of millions of city people.

Actually clear channel farm programs reach a small portion of the farm population. Farmers get their local weather information and other programs of particular interest to them from their local stations which understand their problems and have the available radio time to devote to news and information of special interest to them.

[fol. 1496] Originally this country had 46 clear channels. But as the need grew for additional local and regional stations, the Commission began to duplicate clear channel frequencies, placing additional stations on the same channel but sufficiently distant so that there would be no interference.

Clear Channel Lobby Formed

Several years ago sixteen clear channel stations realizing that this sensible and necessary trend would eventually catch up with them, banded together into a lobbying organization. This lobby filed a petition with the Commission demanding that the remaining clear channel stations be granted 750,000 watts of power, that they might give better service to 23,000,000 rural listeners. They make this ridiculous argument with a poker face. That the 23 million farm people could be better served by local stations, the product of duplication, is glossed over by the clear channels and the obedient Commission.

On this petition, the Commission held extensive hearings comprising 6,700 pages of testimony, 421 additional exhibits and voluminous briefs. Furthermore, based on a bill I introduced last year the Senate Committee on Interstate and Foreign Commerce held one of the longest and most exhaustive hearings in which I have ever participated. More than 70 witnesses testified in person and some 600 radio stations in this country sent in letters or statements making a printed record of more than 1200 pages.

Chicago Tribune Station's Vast Coverage

It is not difficult to understand what is back of the petition to grant these clear channel stations 750,000 watts of power, and what the effect on other stations and on the country would be. The Chicago Tribune, the spearhead of the lobby seeking superpower, is demanding 750,000 watts. Today, with 50,000 watts, that station covers roughly a semi-circle ranging from the Alleghanies on the east to

Kansas and Nebraska on the West, and south into Kentucky and Missouri. In that vast area there are scores of other stations, small locals and medium size regionals, some prosperous and some not so prosperous. They must live on advertising and they must compete with the big clear channels for a fair share of the territory's advertising dollar.

The Chicago Tribune station is supposed to be serving the farmers in all this vast area, despite the fact that ten different kinds of weather may exist at the same time in various parts of the area and despite the fact that in one section tobacco is the crop, in another corn, and in a third wheat, or dairying, or beef cattle production. There are not enough hours in the 19-hour broadcast day to put out all the varying information it really takes to give a good service to each of these local sections of that territory, carry the network programs it is obligated to carry, and at the same time serve the Chicago metropolitan area from which it derives most of its revenue.

High Power Means Monopoly

That's the picture of a clear channel station as it operates today, with 50,000 watts of power. Now, what would the situation be with 750,000 watts?

The area to be covered would increase in size materially; the Chicago Tribune's voice then would be heard in the two Dakotas, Michigan, Minnesota, Iowa, Kansas, Nebraska and Oklahoma, parts of Colorado, Wyoming and Montana, south to the Mexican border, and eastward beyond the Alleghanies. In the area it previously covered with 50,000 watts its signal would be so powerful that no station could compete.

How long do you think national advertisers are going to pay for 20 stations to cover an area which they can cover with one? One thousand and even 1,500 miles from Chicago the voice of the Tribune would be heard clear and loud and strong, by the rural people and hundreds of cities already being well served by their local stations. Obviously, these smaller stations, now suffering drops in revenue, would wither on the vine.

[fol. 1497] Now, multiply the Chicago Tribune case by ten or twelve 750,000 watt stations located so their combined broadcasts completely blanket the entire United States.

How many regional radio stations are going to remain in business in this country in competition with that kind of monopolistic operation?

The economic effect of this super power broadcasting would be appalling. A small group of owners would control radio in this country. That is bad enough but consider the frightening political and social consequences of such a development.

For example, how would the senator from Minnesota (Mr. Humphrey) fare if during a political campaign he had to make arrangements with the Chicago Tribune for time for a broadcast to cover his state of Minnesota?

Or the senator from North Dakota, (Mr. Langer) trying to buy time to speak to his constituents on a matter of great consequence to them?

Or the senator from Wyoming, (Mr. Hunt), who just came through a successful campaign. How would it have been if he had to do his broadcasting from Chicago to catch the radio ear of the Wyoming people?

Is the Senator from Alabama (Mr. Hill) going to have to use the clear channel stations in Louisville and Nashville in order to talk to his people in Alabama? He may have to compete for time with the senator from Florida (Mr. Pepper) who will have to use one of these stations to get his views across to his Florida voters.

How can these clear channel stations begin to give service to all the people to whom they seek to furnish radio service?

What kind of a country are we going to have when a half dozen corporations control the airways of America? I don't care how pure they are, or how public spirited, or how fair. It is not in the democratic tradition that this potent medium of propaganda be in the hands of three New York corporations and three of four other powerful station owners.

These reasons are compelling enough to warrant the closest congressional scrutiny of this monstrous and wicked proposal.

I have never heard a senator complain that the rural people in his state are not getting radio service; what they do tell me is that local stations are deprived of rendering a better service by the rules and the regulations of the Federal Communications Commission which keeps them off the air.

Duplication Improves Service

Many states require additional radio stations which they cannot get now because there are no channels on which to place them. But if the Commission would place additional stations on the remaining 22 clears a substantial number of additional stations would become immediately available. Obviously, there is no interference to a New York station if another station is placed on its channel west of the Alleghanies. Cheyenne and Reno need 50,000 watt stations to serve large, thinly populated rural areas. But Cheyenne and Reno can not provide state wide radio coverage because no frequencies not controlled by the 22 clear channel stations remain available.

I emphasize that if and when additional stations are added on these clear channels nothing would be taken away from today's clear channel stations. They would continue to cover the area they now cover; they would continue to broadcast with 50,000 watts; they would remain the large and powerful stations they are today. But seemingly there is no limit to their greed and their ambition to dominate America.

I repeat once more that the clear channels themselves do not belong to these stations. These channels belong to the people but the Federal Communications Commission which was created to protect the people, preserves them for a private monopoly and refuses to break them down. [fol. 1498] I have been damned by the clear channel lobbyists and their powerful friends for resisting their vicious objective. More than a year ago, our Committee asked the Commission to withhold any decision in the clear channel case pending hearings on the bill I introduced to require duplication and limit power to the present 50,000 watt grant. Consistently and continuously the Senate has made it clear to the Commission that it doubts their authority to grant super power to clear channels under the Communications Act which requires competition in radio and especially that licenses be granted in the public interest, convenience and necessity. The objective of the grasping clear channel lobby is directly contrary to the public interest; it assures monopoly rather than competition, and above all else it is a direct threat to the freedom of broadcasting information.

FCC Decision Expected

In spite of the clear intent of the law, the Chairman of the Commission in recent public speeches has hinted that the Commission might make its clear channel decision around May 1. It would be a fatal step against the people of the United States should the Commission in this decision fail to limit power to 50 kilowatts and abandon its precedents for duplication of clear channels. The two thousand small stations throughout the United States who would be harmed directly have no effective legal remedy to stay the proceedings and prevent a super power grant. Even if they could secure an injunction and try the matter in the courts, who among them can afford the lengthy and expensive litigation that would be involved in going to the Supreme Court of the United States against the rich and powerful interests who seek this stranglehold on the public opinion of America?

As I understand it, the Chairman's position at the moment is that the anticipated development of the radio art has made the super power question academic. But I maintain such an assumption is not the answer. The Commission has the legal duty to foster competition and it should not rely on hoped-for economic factors to solve this vital issue. Affirmative action in the interest of competition which would effectively halt monopoly is mandatory now if the public interest is to be served.

Hemisphere Agreement Cited

One reason assigned for making an early pro-clear channel decision is that this country's proposals for the North American Regional Broadcasting Conference must be circulated among the signatory countries by May first. I want to make it plain that I think we should have had a decision in this case years ago but not in the interest of monopoly and special privilege.

It would be well to bear in mind that six countries in this hemisphere, Canada, Cuba, the Dominican Republic, Haiti, Mexico, and the United States are signatories to what is known as the North American Regional Broadcasting Agreement. It expired in 1946 but was renewed until March 29, 1948. Legally, no agreement exists today. A conference to discuss a new Agreement is scheduled to be

held in Quebec beginning this September. The usual practice in such conferences is for each of the participating countries to formulate their proposals six months in advance and circulate them among the participating countries so that each will be familiar with the other's proposals prior to the conference.

This agreement, commonly known as NARBA, assigns and allocates frequencies—not stations—to be used by each of the signatory countries. Let me emphasize that NARBA allocates frequencies, not stations. This Agreement stipulates the rights to use frequencies; it defines the various classes of stations and the service areas; and it defines hemispheric interference. Under that Agreement the 106 channels in the standard broadcast band, to which I referred earlier, are broken down into 59 clear channels, 41 regional channels and 6 local channels. Of the 59 clear channels, the United States was granted 46 with a high degree of protection from interference by any of the other signatories. The other 13 clear channels were assigned among the remaining signatories with the same degree of high protection for use in those countries.

[fol. 1499] In the United States 24 of our 46 clear channels have been duplicated, that is more than one station has been placed on each of these frequencies in order that we might accommodate the demand for stations in this country. The remaining 22 clear channels successfully have resisted duplication and have retained for themselves the sole and exclusive night-time use of their individual channels. They are the king-pins of the radio world and are officially designated as Class I-A stations.

Despite the fact that nowhere in the Agreement is there any mandate that Class I-A stations should have power in excess of 50,000 watts, the clear channel lobby insists that the Agreement contemplates that the Federal Communications Commission should grant them operating power of 750,000 watts. This lobby contends that if we do not increase the power we will lose our exclusive rights to these clear channels. A more distorted interpretation of very clear language cannot be imagined.

I cannot believe that our country, or that any of the other five signatory countries, ever would have signed an Agreement which required them to operate their own domestic stations according to a pattern laid down by other countries.

To the contrary, the only logical assumption is that each country agreed with the others with respect to the assignment of channels between them and the kinds of stations that would operate on these channels. Obviously, each country should have the right to operate its own domestic radio stations in such manner as is most suitable and desirable for the public welfare of that country so long as such operation does not interfere with the operation of radio stations in the other signatory countries.

Nevertheless, the clear channel lobby asserts that this country must go to the Quebec conference with a proposal that class I-A clear channels should operate with 750,000 watts of power. Whether or not the State Department, which is responsible for negotiating international agreements, and the Federal Communications Commission will fall for this poppycock remains in grave doubt. I cannot believe that the State Department will countenance such a selfish American program.

Frankly, I am at a loss to understand the lobby's line of reasoning. In the first place, I am opposed to 750,000 watt operation of radio broadcasting stations in the United States because of the certainty of resulting monopoly control. In the second place, I can see no reason why the formal proposals of the United States should include any reference to the amount of power with which Class I-A clear channel stations should operate so long as we continue to operate them with the 50,000 watt minimum set forth in the agreement.

I repeat, none of the other participants in the conference should be interested in what amount of power we use in this country so long as we do not cause interference to their stations; similarly we should have no concern as to the amount of power they use so long as they do not cause interference to our stations. On this basis, and on this basis only, the United States should promise its NARBA proposals.

Will Oppose Agreement

Cuba and Canada are not pressing for any change in power. While today Mexico is operating several stations with power in excess of 50,000 watts, I was informed by high and reliable government authority there that such operations are uneconomic. I was told that while they would not look with favor upon some other country telling

them what power they should use, they would favor an agreement limiting power for all of the signatories to the North American Regional Broadcasting Agreement. We cannot cure the very unsatisfactory Mexican broadcasting situation by going to super power ourselves. Such an attempt is certain to lead to a radio power race and is a resort to the law of the jungle to work out a good neighbor problem. Obviously, this is directly contrary to the good neighbor policy.

I repeat again, it is my considered judgment that the Federal Communications Commission would repudiate the clear intent of our Communications Act if it were to render a decision granting authority for the operation of our clear channel stations with super power. This act requires that there shall be competition in radio broadcasting and that assignments of frequencies and power shall be made in [fol. 1500] the public interest, convenience and necessity. I contend that an allocation of power in excess of 50,000 watts would be detrimental to the public interest, convenience and necessity.

Let me make it very clear here and now that if the Federal Communications Commission does hand down a decision granting super power to any radio station in the United States and if the State Department will propose that as a policy at the Quebec conference, as a Senator of the United States and as Chairman of the Senate Committee on Interstate and Foreign Commerce, I shall go to Quebec on my own and make clear in every way I can that any such agreement will be opposed in the Senate of the United States to the limit of my ability. Nor shall I rest until the present power limitation is restored by law. I am certain that I will have plenty of help in the Congress when the 2,000 radio stations in the United States and the listening public discovers by bitter experience what has bee foisted on them.

Television Monopoly Shaping Up

The clear channel super power question does not stand alone as a symbol of monopoly and economic tyranny. The same dangers are present even in a greater degree in television. In television, as in standard AM radio, the Commission seems to be flirting with the idea of going along

with the engineering and economic thinking of big private interests who have planned a policy of tight control.

It is time that members of Congress should know more about television. This highly entertaining art brings to the citizens of selected large cities interesting and entertaining programs which are bound to improve in the days ahead. It is a rapidly expanding industry. The people of the United States already have purchased more than 1,300,000 receiver sets. There are now 60 television stations on the air and applications have been filed for more than 300 new stations. Chairman Coy has predicted that within a decade there may be as many as 800 television stations and possibly 20 million or more receiving sets in use. Leading personalities of the radio industry believe that ordinary aural radio broadcasting is on its way out and television is the coming thing. I do not wholly agree, but certain it is that television in the large cities is crowding AM.

Today's Television Limited

Today television operates on 12 channels in what is known as the Very High Frequency band. The original assignment was 13 channels but interference made one channel unusable. Other interference problems have cropped up, all combining to bring into serious question the entire original allocation and the standards then adopted. In any event, it has been obvious for a long time that the 12 channels now being used will not provide a competitive nationwide television service and Commission spokesmen frankly say so.

However, there is ample space in the spectrum to operate television so that the entire nation might be served. That space is known as the Ultra High Frequency band. The space occupied by the present television channels ranges from 44 to 88 megacycles and from 174 to 216 megacycles. The Ultra High band ranges from 480 to 920 megacycles. Obviously, there is a lot more space for television in the Ultra High than in the Very High band.

Today television operates on a channel six megacycles wide; that is, the electrical impulse that carries the picture and the voice is six units wide. Assuming the Ultra High spectrum was divided into channels six megacycles wide, 73 channels would become available as compared to the 12 channels presently being used in the Very High band.

Here then is the opportunity to really provide a competitive nationwide service, when and if every community desiring television can support it economically.

[fol. 1501] But the Commission stuck to the Very High band, assigned 13 channels and adopted standards which limited the operation to black and white television. This was done despite the fact that one of the large units in the radio industry testified at length and fought to secure a decision which would permit operation of color television. But an even larger cog in the industry vigorously opposed color standards at that time and insisted that the industry was not ready for good color television.

Commission adoption of that view, whether or not it was technically correct at the time, further entrenched monopoly control of television. When the decision came down for black and white operation every major unit in the radio broadcasting industry which could afford it filed applications and sought to expedite construction of television stations. In the forefront of this movement was the National Broadcasting Company, a subsidiary of the Radio Corporation of America, which probably has done the major experimental work in television and which asserts control of the overwhelming majority of basic patents for the manufacture of television transmitters as well as receivers. It is to the credit of the Radio Corporation that it risked its capital, even though this was no eleemosynary act on its part in view of its dominant position in the industry and its tremendous investment in patents. It had opposed color; it had opposed opening up the Ultra High band to commercial operation; it had advocated certain engineering standards; and it had won Commission acceptance all down the line. It is obvious that as the industry prospered, the company prospered.

Television Service Limited

Under the regime of former Commission chairman Charles Denny, now an executive vice president of the National Broadcasting Company, the 12 channels first assigned would restrict television to 394 stations in 140 metropolitan communities in the United States. Some cities would have as many as five stations; some only two. But if senators think that all the cities in their states were going to have television, they have another think coming.

There are more than 2,000 cities in this country with a population of 5,000 or over and obviously some 1,800 cities were not to have television under the original plan.

That allocation could not stand up. When senators and congressmen would finally realize a year or two hence that television had become a caste service and could be made available on a nationwide basis only through a scheme that pumped the New York and Hollywood programs through a monopoly controlled system, all the past criticisms and complaints about the Commission would fade into insignificance compared to the roar which their constituents would thunder at them.

The experts testified again. The principal difference now was that those who had urged previously that color television be permitted in the present channels were strangely silent. Under the law the Commission is directed to promote every advance in the art. It dare not sit idly by waiting for the industry to time progressive steps. Memoranda from some of the Commission's own technical people showing that color could be used, that additional frequencies could be employed, were not touched upon and the serious problem of patent controls was hushed up. Everyone in the industry was actively pushing black and white; no one wanted to be left behind in the race for the lucrative profits that were anticipated from advertising.

After this hearing the Commission proposed a revised allocation of television channels. This time it broadened the base; the total number of cities that *might* have television was increased to 459 and the total number of stations boosted to 955. This is still a long way from giving competitive television service to the people of the United States. The theory was fine, as far as it went, but would it work? How much separation was necessary between channels occupied by different stations in the same town? How close or how far away could one town be from another for an acceptable use of the same channel? To what extent will there be blurred reception in the area where two stations in nearby cities are on the same channel. An ad hoc committee was created to find the answers.

[fol. 1502] But this committee of experts faced an even more embarrassing problem. Several years before, the Commission had removed other services from the Very High frequencies and granted the channels to television.

That was done even though some engineering authorities asserted at the time that it was an unwise allocation and would bring headaches. Now, the committee of experts finds itself in a quandary. Their new engineering data appears to be at sharp variance with the data that was used several years before to support the original television allocation.

Now it is discovered that television stations on the same channels must be 225 miles apart to insure no interference. To slow up opening of the Ultra High frequencies the high and mighty in the industry are attempting to convince the Commission that synchronization solves the interference problem. It did not solve it between Detroit and Cleveland.

Perhaps the committee of experts hesitates to write a report which will make clear that the present television allocation scheme just will not work; that too many stations have been allocated on the same channels in cities too close to each other. Such a finding would buttress with engineering documentation the frequently repeated charge that the original television allocation was and is a monopoly device. Also such a finding would make obvious the need for a quick shift into color and the Ultra High frequencies so that a non-monopolistic and truly nationwide television service might become available.

Assuming the expert committee is permitted to make an objective and factual report, the present Commission must either openly disavow the television allocation of a few years ago and start all over again or fumble around in an attempt to remedy the basic error that was committed.

The Commission, under its new chairman, continues the search for a way to patch up the abortive allocation. Unfortunately, their planning does not contemplate a new and fresh start. Apparently, the pressure is too great and the Commission too timid to take such a constructive step. Last September the Commission proclaimed a freeze on further television applications while it worked out the complicated details. That freeze continues today.

That the Commission recognized fully that the Ultra High frequencies would be necessary eventually is obvious from the fact that it set aside those frequencies for television. Some day an alert and progressive Commission is going to open the Ultra Highs to commercial television operation. Some day, an alert and progressive Commission is

going to allow color television to be operated. Since such steps will prevent monopoly and tight control, powerful industry interests, anxious to tune the "*time*" to its own profits, connives for delay. Perhaps it is natural they should do so. But why should the Commission be blind?

A large corporation, holding control of basic patents on transmitting and receiving equipment, collecting royalty tribute from all other manufacturers, and owning five television stations favorably located in the largest cities, has compelling economic reasons for freezing television allocations and standards until the time is ripe for a shift. It needs time and opportunity to build a nationwide network; it wants time and opportunity to merchandise millions of receiving sets. Then, when an obliging Commission would agree and announce that television is ready for the new day, the second skimming of the cream could begin. The Commission apparently is naive enough to believe that monopoly is avoided because patents are freely licensed; they do not appear to understand that if the timing of each step can be influenced, the selfish objective of monopoly control has been effectuated.

[fol. 1503] Under these circumstances, it is obvious why Congressman Harry Sheppard has again proposed legislation which would effectively bar all manufacturing enterprises in the communications field from holding a broadcast license or operating a radio network. Such a prohibition would remove once and for all the constant specter of monopoly with which no Commission seems able or willing to deal.

There are other disturbing facets to this monopoly picture. Broadcasters who have been convicted of anti-trust violations are granted increases in power; interests who have accepted consent decrees stand defiantly at the counter demanding the right to get into television; networks "move in" to exert even greater control of their affiliates by becoming brokers for national advertising. The Communications Act itself makes quite clear that convicted monopolists should not hold licenses. But strangely enough, the Commission has never promulgated a rule which would settle directly once and for all its own interpretation of the Act on the rights of those who have run afoul of the anti-trust laws. It gives lip service to its network rules.

The Communications Act, which the Commissioners have

sworn to administer honestly and faithfully, declares that they shall:

> "generally encourage the larger and more effective use of radio in the public interest"

and it makes certain and positive their duty to protect the public interest, convenience, and necessity and to preserve competition.

In the final analysis the Commission has one overriding duty:—to push the development of the art. It has data and skilled engineering advice in its own files which say that color is ready; that the higher frequencies can be used.

Television Faces Change

Television today is not what this visible art will finally be any more than Wright Brothers' "Kitty Hawk" can be compared with today's jet propelled bomber. Already, television in the laboratory surpasses in very material aspect what is on the market. The imposition of arbitrary standards by a government agency can have no other effect than to freeze the art until such time as powerful interests order the thaw. Standards must be elastic so that American brains and inventive genius will have freedom and the challenge to move forward as fast as science permits.

Let me make it clear that no one realizes more than I what difficult and vexing engineering decisions are involved. Television today is still a rich man's game; pickup and transmission equipment costs huge sums of money; the existing channels which have the better coverage have been assigned to large cities; and uncertainty and confusion continue to exist about allocations and standards. The Ultra High frequencies which offer so great an opportunity for expansion and competition are not yet fully explored for the visible art largely because they have not been allocated for television use.

Make Television Competitive

All that I am seeking is to make television a wide-open competitive business. Development and improvement will then come along rapidly under our free enterprise system. There can be no objection to the big networks getting into television; on the contrary we should be glad that they took

the initiative and risked their capital and I commend them for it. But I do not want the Commission to be their pawns. I do not want the Commission to wait until the last boat in this fascinating field has put to sea with none of the little fellows aboard.

Some way must be found to make it possible for the little fellow to get into this business, and to get in as rapidly as possible. As television pushes forward in the radio field, the source of the present radio stations, advertising revenues will dry up; the average broadcaster cannot stand those losses for five or six years. He must be given the opportunity *now* to make constructive adjustments.

[fol. 1504] If there is to be a preferred class for television licenses, certainly those who pioneered in the radio industry; those who have rendered a magnificent public service in the broadcast field are entitled to consideration. The grandfather tradition must not be forgotten. The Commission has recognized that its first allocation plan is wrong; it has proposed a second plan which is also wrong; while there is still time to rectify the mistake it might give consideration to a plan which will allow the average broadcaster in the average sized city to get into television and promote the same very satisfactory and effective competition we enjoy in radio today. Color television will help the little fellow because he could get local advertising revenue which he can not get with black and white. Opening up the Ultra High's to commercial operation with color would compel the radio industry with the laboratories and the large staffs of skilled engineers to get in and develop the Ultra High's instead of hanging back to first exploit the lower frequencies.

What I am concerned about, and what every member on this floor and in Congress must be concerned about is in the future who will furnish television programs; who will control the medium; who will own the stations?

In this magnificent frontier of modern miracles slumbers the opportunity to revitalize, expand and restore freedom of information. It is a job to which every individual commissioner and every member of Congress should address his undivided attention, remembering first and foremost that the cornerstone of American life is the freedom of the individual—freedom in his economic pursuits and above all freedom of thought and ideas. The Congress working closely with the Federal Communications Commission as a

team fighting to protect the people can make these freedoms living realities.

[fol. 1505] Copy

United States Senate
Committee on Interstate and Foreign Commerce
Washington, D. C.

August 22, 1949

My Dear Commissioner Jones:

Thank you very much for the copy of your letter of August 19 to Dr. Frank Stanton of Columbia Broadcasting System. I am grateful to you for your courtesy in sending me that letter in view of my interest in urging that nothing be done to block the progress of color television.

In writing that letter you have rung the bell in my opinion and I commend you for it. I believe you will be interested in the letter I have today written Vice Chairman Walker on these points and my letter to Dr. Frank Stanton.

I am certain that your colleagues will go into the forthcoming television hearings with an open mind not only anxious to hear and see all the facts, but they will insist that all of the facts be presented to them. If that is done, I have no doubt what the final answer will be.

Sincerely yours, (S.) Ed C. Johnson

Honorable Robert F. Jones
Federal Communications Commission
Washington 25, D. C.

[fol. 1506] Copy

United States Senate
Committee on Interstate and Foreign Commerce
Washington, D. C.

August 22, 1949

Dr. Frank Stanton, President,
Columbia Broadcasting System,
485 Madison Avenue,
New York, New York

My Dear Dr. Stanton:

It gives me great pleasure to tell you how much I enjoyed the demonstration of color television staged by Smith Kline and French with Columbia and Zenith equipment, on August 19 at the Armory here.

It was a magnificent and utterly convincing proof that color television is here now, and that all that is necessary for it to sweep the nation is for the Federal Communications Commission to remove the road block and promulgate standards for its operation. Almost without exception, all who saw it to whom I talked were astonished and captivated by it; few of them knew beforehand of its present state of development.

While I realize that Columbia is assiduously careful to explain that these demonstrations are not sponsored by it, nevertheless the people of this country owe a tremendous debt to your company for its courage in investing large sums in research and for the progress in the consistent development of the broadcasting art.

I am convinced that if the broadcast licensees of this country could see that demonstration, they would quickly realize that a great day has come for them. Those who have pioneered in black and white television have made heavy investments and have taken heavy losses in its operation, color television is certain to eliminate that financial loss No one who sees color is ever going to be satisfied with ordinary black and white television again. It is not enough to make the comparison between black and white motion pictures and technicolor. A more apt comparison is between the old Model T and today's superb automobile.

However, the reluctance to show the Federal Communications Commission the facts by those who know most about color and who can most effectively demonstrate its development disturbs me. On this point I am sure you will be interested in the letter I have written Vice Chairman Paul Walker of the Commission, which I am enclosing.

With my very best regards, I am

Sincerely yours, (S.) Ed C. Johnson

[fol. 1507] Copy

United States Senate, Committee on Interstate and Foreign Commerce, Washington, D. C.

August 22, 1949.

My Dear Commissioner Walker:

I have received a copy of the letter of Commissioner Robert F. Jones to Dr. Frank Stanton of the Columbia Broadcasting System dated August 19 in which Commissioner Jones requests certain information from Dr. Stanton dealing with refusal by manufacturers to construct color transmitters and receivers and Columbia's alleged inability to make available a sufficiently large number of color converters for field tests for the Commission's September television hearings.

The questions raised by Commissioner Jones are vital. I am gratified that he has requested this information because obviously it is information that the Commission should have.

It is tragic that so great a development as color television —far superior to black and white—should be arbitrarily blocked by selfish interests. I regret that the very interest which has been most active in pushing color television suddenly has become very cold to further efforts in this direction. Neither I nor other members of this committee who have discussed the subject with them can comprehend their stated reasons.

The color demonstration tests last week at the Armory in Washington, televised direct from a Baltimore station 35 miles away, proved beyond any question that color television is here now. Everyone who saw that demonstration came away aware that they had witnessed a tremendous advance in television—an advance that the people of the

country want and will buy the moment they have the opportunity to do so. Since today's color television is not as good as eventually it will be, it is contrary to the laws of progress for the Commission to wait until color television is perfect before it approves standards. That sort of reasoning may be logical in a totalitarian or corporate state; it is nonsense in a free competitive enterprise economy such as ours. Of course, color television will improve; it will become better and better but that is no reason that the people of this country should be deprived of it now any more than they should have been deprived of crystal set radio 20 years ago.

Based on known demonstration, the plain facts are television licensees can broadcast color signals for comparatively little additional capital investment over present equipment for black and white and with no additional operating cost; every television receiving set now in the hands of the public can be equipped at a relatively modest cost with a convertor or adaptor to pick up color signals. Moreover, if the Commission were to give the go-ahead signal [fol. 1508] for color, receiving-set manufacturers would know with certainty that receivers hereafter manufactured should be equipped for color television reception and an additional market for sale of convertors would be immediately created. To stall, to procastinate, to wait merely means that the great buying public of America would be required to continue to buy black and white receiving sets which eventually will require convertors. The Commission knows that one day it will authorize color; why wait? Who is going to be harmed by authorizing it if after your September hearings you have actual evidence that color television is a workable and practical art.

Of course, no one expects the Commission to act without the facts and the data. This is the reason for your September hearings. The Commission has a clear public duty to see to it that those hearings are productive of facts. Under the Communications Act (section 303 (g)) the Commission must see to it that the broadcasting art progresses and that every bit of information and data bearing on color television is presented to it.

You will recall that this Committee requested Dr. Edward U. Condon of the National Bureau of Standards to create a technical committee of scientific minds to report to it on the technical status of color television. It was our

belief that such a committee would help protect the public interest by presenting independent, unbiased, unimpeachable coldly scientific facts regarding color television. The report of the Condon committee will, of course, be presented to the people through Congress. I am confident that it will not only but-ress the position of those members of the Commission who do not have a closed mind on color television but will make impossible again the action taken by the Commission at the last television hearing when it shut the door on television progress.

I repeat that I am disturbed over the plain implications of Commissioner Jones' letter to Dr. Stanton. Those implications are that the people who know most about color, who have aided greatly in its development and whose equipment has produced remarkable demonstrations of the practicality of color, are reluctant to make the kind of a showing at the forthcoming television hearings which will prove conclusively that color is here now and that standards can be promulgated for its commercial operation.

I assume that Commissioner Jones has good reason to request the information he asked for. I trust that he will have the cooperation of the Commission in his efforts to bring out all the facts at your September hearings.

The Commission, I am sure, is not going to allow itself to be swayed by a few selfish interests, regardless of how powerful they may appear to be. The radio manufacturers who are seeking to slow up the advance of science, and throw road blocks in the way of progress, appear to be motivated by selfish financial reasons. Moreover, compared [fol. 1509] to the millions of people who will benefit from and enjoy this new development, radio manufacturers are few indeed. Nor should the Commission overlook the fact that television licensees themselves will find color television an economic boon; those who are pioneering in television and taking heavy losses in its installation and operation deserve your sympathetic consideration. All of them agree that the use of color will expand advertising revenues so rapidly for them that the red-ink days of television will quickly disappear.

I sincerely hope that the Commission will brook neither delay nor interference in seeing to it that the forthcoming television hearings are full and complete hearings in which every available and ascertainable fact regarding the progress and practicality of color is demonstrated fully and

fairly. It has a duty to do that; as conscientious men and women, sworn to protect the public interest, they cannot and must not do less.

Sincerely yours, (S.) Ed C. Johnson.

Honorable Paul A. Walker, Vice Chairman,
Federal Communications Commission,
Washington 25, D. C.

[fol. 1510] Copy

United States Senate
Committee on Interstate and Foreign Commerce
Washington, D. C.

November 12, 1949.

My dear Mr. Chairman:

From time to time during the recent weeks the radio press has carried short interviews with me regarding the hearings now being conducted by the Commission and television problems generally. In many instances the published stories were only excerpts from the interviews which I gave the reporters.

These abbreviated reports remind one of the fable of the three blind men who examined an elephant. One explored the animal's tail and concluded that an elephant resembled a rope. The second, a very short blind man, wrapped his arms around one of the elephant's legs and decided an elephant was like a tree stump. The third, a very tall blind man, thumped the elephant's side and said an elephant is like a wall. Such distorted descriptions of an elephant and the published excerpts of my interviews both miss the mark.

In order that there may be no misunderstanding with respect to my position on color, UHF and the existing freeze I feel compelled to reiterate my views in brief summary. I have taken great care to state this complete story to the reporters time after time, but apparently only portions of it registered with them.

On Color: It is my earnest hope that the Federal Communications Commission will find it in the public interest to promulgate quickly broad and sufficiently general standards for color so that this essential improvement may be developed naturally in the tradifional American, free